

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In Re: : 08-11153 (MG)  
LEXINGTON PRECISION CORPORATION, : One Bowling Green  
Debtor. : New York, New York  
: February 24, 2009  
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TRANSCRIPT OF TRIAL  
BEFORE THE HONORABLE MARTIN GLENN  
UNITED STATES BANKRUPTCY JUDGE

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DEBTORS':

Dean Vomero			4 (Strochak)		
			45 (Bracht)		
				49 (Tishler)	
Jessie Ultz		56	76 (Strochak)		
Nick Walsh		81	86 (Strochak)	92	
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1 THE COURT: We're still in the midst of Mr. Vomero's  
2 cross-examination.

3 MR. STROCHAK: That's correct, Your Honor.

4 THE COURT: Mr. Vomero, can you please come back to  
5 the witness chair? You're still under oath, Mr. Vomero.

6 Before we begin, with respect to scheduling, we can  
7 go this morning until 12:15. I'm going to be tied up from  
8 12:30 to 3:30. I know I said yesterday we would resume today.  
9 We can actually resume, if necessary, this afternoon from 3:45  
10 until 6:15. Hopefully it won't be necessary but that's the  
11 plan.

12 MR. STROCHAK: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. STROCHAK:

15 Q. Good morning, Mr. Vomero. You have visited each of the  
16 debtor's plants; correct?

17 A. Correct.

18 Q. You visited the medical plant in Rock Hill?

19 A. Yes.

20 Q. Just once?

21 A. Yes.

22 Q. The insulators plant in Jasper, Georgia just once?

23 A. Correct.

24 Q. Were your visits sufficient to familiarize yourself with  
25 the operations of the plant and its functions?

Vomero - Cross

5

1 A. At a moderate level or lower level.

2 Q. On a lower level?

3 A. I would say moderate level.

4 Q. Now, you understand that the medical plant in Rock Hill is  
5 a self-contained operation; correct?

6 A. Can you be more specific?

7 Q. Yes. Are there any critical operations for the medical  
8 business that are outside of the Rock Hill plant?

9 A. I'm not certain.

10 Q. You're not sure one way or the other?

11 A. Correct. I'm not certain if mixing is done there.

12 Q. Have you looked into the administrative functions for the  
13 medical division? Do you understand where the administration  
14 functions for the medical division are performed?

15 A. It's certain administration functions are performed there.

16 Q. Do you understand that they have local finance staff for  
17 the medical division in South Carolina; correct?

18 A. I think they have accounting and -- it's not clear to me  
19 if they have finance stuff there. They do have some  
20 accounting.

21 Q. Are you familiar with any functions for the medical  
22 division that are performed outside of Rock Hill?

23 A. I'm not certain if treasury or IT or general management  
24 type items are at Rock Hill or not. I do know some  
25 administrative functions are performed there. That's my

Vomero - Cross

6

1 understanding right now.

2 Q. Do you understand they have a -- the company has a  
3 corporate office in New York; right?

4 A. Correct.

5 Q. And the company has a corporate CFO, Mr. Welhouse; right?

6 A. Yes.

7 Q. Apart from the functions that the corporate office in New  
8 York and Mr. Welhouse as CFO may perform, are you aware of any  
9 services necessary to support the Rock Hill medical business  
10 other than those provided at the Rock Hill facility?

11 A. Other than what I've discussed previously.

12 Q. So the answer is no other than the treasury function and  
13 perhaps the finance function that you mentioned?

14 A. I'm not certain if information technology is done there or  
15 it's centralized in another location.

16 Q. Looking at the Rock Hill facility from the perspective of  
17 a potential buyer, is it your understanding that a potential  
18 buyer could operate that business as a stand-alone business?

19 A. Depends.

20 Q. It depends on the buyer?

21 A. Correct.

22 Q. So a buyer with corporate overhead, finance function, IT  
23 function perhaps could simply acquire the medical business and  
24 operate it; correct?

25 A. It depends who the buyer is.

Vomero - Cross

7

1 Q. If the buyer had -- assume for me for a second that the  
2 buyer has a corporate overhead structure, a finance function,  
3 an IT function, a treasury function. That type of buyer, they  
4 could simply acquire the medical business and operate it as a  
5 standalone business; is that right?

6 A. I believe they would. Again, that's a difficult one to  
7 answer because it depends who the buyer is. They're going to  
8 want additional management in there. They're going to want --  
9 have their own services that they want that are different than  
10 what the facility is today. It's a very difficult question to  
11 answer and I'm not -- again, it's a very challenging question  
12 to answer.

13 Q. Well, have you done any analysis of the saleability of the  
14 medical plant in Rock Hill on a standalone basis?

15 A. Other than discussions with Campbell on the sale process  
16 and management I haven't done -- and the valuation work we did.

17 Q. You did the valuation work; correct?

18 A. Correct.

19 Q. In doing the valuation work, did you do any assessment of  
20 what a perspective buyer would be looking at in terms of the  
21 necessity of providing services for the medical business?

22 A. An assessment of services that a potential buyer would  
23 have to -- let me make sure I understand your question.

24 Is your question if a buyer were to come in what type of  
25 services would that buyer have to provide above and beyond what

Vomero - Cross

8

1 is at Rock Hill. Is that your question?

2 Q. Yes, exactly. Did you make any assessment of that issue?

3 A. Assessment?

4 Q. You seem to be struggling with the question.

5 A. Yes, I really am.

6 Q. So let me see if I can rephrase it for you.

7 You assessed in some way, shape or form the ability to  
8 divest the medical business in Rock Hill; correct?

9 A. No. We valued the total enterprise on a fair market value  
10 basis and what we did is tried to marry the cash streams for  
11 each one of the different business units. So we didn't -- we  
12 assumed a willing buyer, a willing seller for the entire  
13 corporate entity. So that was the presumption I made when I  
14 did the valuation work. So stripping it out and selling  
15 individual units perhaps could be done but the assumption we  
16 made was that it was the entity intact.

17 Q. So you're not sure whether or not the sale of individual  
18 units could be accomplished. Is that what you're saying? You  
19 haven't analyzed that issue?

20 A. Based on the results of the sale process it's feasible.

21 Q. Which sale process are you referring to, the prepetition?

22 A. Correct.

23 Q. And the prepetition sale process resulted in an offer of  
24 \$32 million subject to diligence, a conditional offer for \$32  
25 million for just the medical business; correct?



Vomero - Cross

9

1 A. That's my understanding.

2 Q. That buyer Trummer Board [Ph.] was not proposing to  
3 acquire any of the corporate assets, correct, the corporate  
4 overhead, so to speak?

5 A. Correct.

6 Q. Now, apart from the prepetition sale process, in  
7 connection with your work for this hearing in your report, have  
8 you done any analysis of the types of buyers that would in fact  
9 consider purchasing the medical business?

10 A. No specific buyers for the med -- not -- I want to make  
11 sure I understand the question. Can you repeat it, please?

12 Q. Yes. I'm trying to get a sense. You're telling us that  
13 you think it's reasonable to market the medical business and my  
14 question is have you done any analysis of the types of  
15 potential acquirers who might actually be out there and might  
16 be interested in purchasing it?

17 A. We've looked at two of the interested parties. Of course,  
18 Trummer Board and I think Parker Hannifon [Ph.] was interested  
19 in certain -- interested in the business generally. We looked  
20 at kind of their financial health and wherewithal generally,  
21 but that's the extent of what we did.

22 Q. Do you believe that any buyer for the medical business  
23 would be looking to acquire the corporate overhead, the  
24 corporate structure and the cost structure associated with the  
25 corporate office?

Vomero - Cross

10

1 THE COURT: Mr. Bracht?

2 MR. BRACHT: Your Honor, I would just request that the  
3 witness speak up a little bit. I'm having a difficult time  
4 hearing him.

5 THE COURT: Just pull the microphone closer to you,  
6 Mr. Vomero.

7 A. Can you repeat the question?

8 Q. Yes, sure. Let me rephrase it.

9 Have you identified any potential buyers for the medical  
10 business who would be interested in acquiring the medical  
11 business itself in Rock Hill and the corporate overhead that  
12 goes along with it?

13 A. We didn't do comprehensive analysis of who the potential  
14 buyers would be. What we did was printed limited.

15 Q. Let me switch to the Jasper facility, the insulators  
16 facility.

17 With respect to the insulators facility, have you made any  
18 assessment of whether or not you could operate as a standalone  
19 facility or needs additional services provided by the corporate  
20 offices?

21 A. My understanding is it's fairly similar to Rock Hill in  
22 terms of the administrative functions. So my answers would be  
23 the same.

24 Q. Have you done any analysis of the types of potential  
25 buyers who might be interested in the insulator's business?

Vomero - Cross

11

1 A. No.

2 Q. If you could pick up the binder with the lender's exhibits  
3 in it and your report, Exhibit A.

4 A. I'm sorry. Which?

5 Q. There should be a binder with the lender's exhibits in it.  
6 I think it's the thin binder. The first tab there I hope is  
7 Exhibit A with your report.

8 A. Okay.

9 Q. Turn with me if you would to Page 45.

10 A. I'm sorry, 45?

11 Q. Yes. Actually let me just start somewhere else.

12 Let's actually start on Page 9 of Exhibit A. On Page 9,  
13 sir, you've expressed your view that it's not an unreasonable  
14 course of action for the debtors to consider divesting a  
15 portion or all of their businesses and then you state several  
16 reasons for that conclusion. The first of those reasons is a  
17 review of transactions from September 1, 2008 to February 10,  
18 2009 in the automotive aftermarket OEM and medical sectors.

19 What I want to start with is it's your conclusion, sir,  
20 that the evidence of eleven comparable transactions as you've  
21 identified is a suggestion that there's a robust market for  
22 deals in the current environment. Is that correct?

23 A. That coupled with the financial condition of the debtors.  
24 We didn't think pursuing that option was unreasonable.

25 Q. And the reason you didn't think pursing it was

Vomero - Cross

12

1 unreasonable was because there are actually deals getting done  
2 out in the marketplace; is that right?

3 A. That's correct.

4 Q. Even in the stressed environment; right?

5 A. Correct.

6 Q. Of the eleven, what you've categorized as comparable  
7 transactions, how many of those were in the distressed  
8 environment?

9 A. I didn't classify them a comparable; I classified them as  
10 reasonably similar. In my mind there's a difference.

11 Q. These are transactions where the seller was in a position  
12 reasonably similar to those in the debtor's in these cases; is  
13 that right?

14 A. Based on the description of the target company it was  
15 reasonably similar to one of the debtor's business units.

16 Q. In what ways? Were they reasonably similar with respect  
17 to their financial condition or some other characteristic?

18 A. It was basically their business, the types of product in  
19 their business, their general business.

20 Q. So it's industry as opposed -- industry and product as  
21 opposed to financial condition?

22 A. Correct. So there wasn't financial information readily  
23 available for most --

24 Q. So you haven't provided any financial information for any  
25 of these transactions; correct?

Vomero - Cross

13

1 A. Based on our review it was pretty limited because most of  
2 the transactions were private.

3 Q. You're not able to make any assessment of the value that  
4 the seller received in those transactions; correct?

5 A. There might have been one or two but it was not -- my  
6 recollection is very, very limited.

7 Q. Your recollection is limited?

8 A. No, no. That the financial information with these  
9 transactions was very limited if there was anything.

10 Q. So you've not been able to determine whether these  
11 companies in these transactions were able to achieve high  
12 multiples, for example, of revenue or EBITDA in the prices that  
13 they received; correct?

14 A. Correct.

15 Q. Now, you indicated that the most notable of these  
16 transactions was Deli's sale of its global exhaust business and  
17 that's notable because Deli was in a distressed situation; is  
18 that correct?

19 A. Correct.

20 Q. What you're suggesting is that because Deli was able to  
21 sell assets in a distressed situation that the debtors in this  
22 case would also be able to sell assets in a distressed  
23 situation.

24 A. That was the assumption.

25 Q. Ultimately your opinion is about saleability; right?

Vomero - Cross

14

1 It's -- the question is could these assets be sold and you're  
2 not offering any opinion as to the price in which they might be  
3 able to obtain for them in a distressed situation; correct?

4 A. When we did our valuation work we did it on a fair market  
5 value basis for the whole entity. So it's the best way I can  
6 describe what we did. I had to make the assumption there was a  
7 willing buyer, a willing seller.

8 Q. Well, this isn't evaluation; correct? Your opinions with  
9 respect to these transactions, those aren't evaluations;  
10 correct?

11 A. Correct.

12 Q. What you're doing is you're offering an opinion that  
13 there's a market out there and even companies in distress in  
14 the automotive industry can sell assets in this market?

15 A. That was -- correct.

16 Q. Now, you don't have any indication or -- let me put it  
17 this way. You haven't done any analysis that suggests that the  
18 market that you've identified is going to disappear at any  
19 point in time; right?

20 A. Our analysis was just over the last five months of  
21 transactions. So as current as the date of our report within a  
22 week or so.

23 Q. You can't offer any opinion that, for example, in July or  
24 August or September of 2009 that there won't be willing buyers  
25 out there to buy assets in the debtor's industries. Is that

Vomero - Cross

15

1 correct?

2 A. I think it's an interesting question because I think  
3 there's always a willing buyer at the right price is one of the  
4 assumptions I think. In my view looking forward, I think is a  
5 reasonable assumption.

6 Q. Let me ask you about the second point on Page 9 of your  
7 report where you indicate that your company bridge acted as  
8 financial advisor for a distressed after-market parts  
9 distributor and you were the financial advisor for that  
10 transaction; correct?

11 A. Chief restructuring officer.

12 Q. You personally?

13 A. Correct.

14 Q. And you marketed that business?

15 A. No.

16 Q. How was it sold, in what context?

17 A. To a strategic buyer who the company has a relationship  
18 with. Not a relationship. Who had discussed a transaction  
19 about a year ago and it picked back up again in the summer.

20 Q. That deal closed in December of last year?

21 A. I think it was October when it closed.

22 Q. Now, the reason you mentioned that transaction -- by the  
23 way, what company is it?

24 A. Parts Depot.

25 Q. The reason that you mention that company is you believe

Vomero - Cross

16

1 that that is an indicator that there is a robust market for  
2 deals in the automotive parts after-market industry; correct?

3 A. It's indicative of activity in the broad sector.

4 Q. And that's the reason you included it in your report and  
5 the basis for your opinion that it's not unreasonable or at  
6 least one of the bases for your opinion that it's not  
7 unreasonable for the data is to consider a sale of assets;  
8 right?

9 A. Correct.

10 Q. I take it as chief restructuring officer for the company  
11 that you concluded that you got a fair value for that business;  
12 correct?

13 A. Correct.

14 Q. Mr. Vomero, I'd like to turn to the valuation work that  
15 you did do.

16 THE COURT: Did you consider that transaction as one  
17 of the comparables for your analysis?

18 THE WITNESS: No, it's not a comparable company but  
19 in -- when we did our analysis we started broad with about --  
20 broad searches and tried to narrow down to -- a broad  
21 similarity, not a specific similarity like we did with the  
22 comparable -- a comparable analysis. So it's a much broader,  
23 much broader in skill.

24 THE COURT: So the fact that that company sold at 6.2  
25 times EBITDA doesn't really bear on what any part of the



Vomero - Cross

17

1 Lexington business might be sold at? Does it or not? I mean  
2 you put in your report that it was sold at 6.2 and it was an  
3 after market, parts automotive after-market parts distributor.  
4 Do you consider it similar or not similar?

5 THE WITNESS: I would not consider it comparable for  
6 valuation purposes. The answer is I wouldn't use that  
7 transaction multiple in the valuation.

8 THE COURT: Go ahead, Mr. Strochak.

9 THE WITNESS: I'm sorry.

10 THE COURT: I'm saying Mr. Strochak should ask his  
11 next question.

12 MR. STROCHAK: Thank you.

13 BY MR. STROCHAK:

14 Q. So we're on Appendix E on Page 42 of your report,  
15 Exhibit A. Are you with me?

16 A. Yes.

17 Q. Let me just start with an overview of the method that you  
18 used here. Your methodology that you're using is comparable  
19 public trading companies; correct?

20 A. Correct.

21 Q. In order to determine the multiples for your comparables  
22 you compare their price, that is the market price for their  
23 stock against their trailing EBITDA; correct?

24 A. The equations that plus the market value of equity. So I  
25 think you just said stocks. Stocks are a component of the

Vomero - Cross

18

1 enterprise value. So other than that if you were to --

2 Q. You derive a multiple for each of your comparables and  
3 then either take it directly in the case -- we've only got one  
4 comparable or aggregate in the case when you got more than one;  
5 right?

6 A. Yes.

7 Q. And you've done that on three dates? You've done that the  
8 end of March '08, end of December '08 and February 10th;  
9 correct?

10 A. Correct.

11 Q. Then you derive in the -- on the right-hand side of Page  
12 42 in the table you show the trailing 12 months EBITDA for each  
13 of -- for businesses of the debtors; right?

14 A. Correct.

15 Q. And you compare that in the first table against December  
16 '08. So you look at March '08, you look at December '08  
17 trailing 12 months EBITDA; right?

18 A. Correct.

19 Q. Now, on the first line insulators, you show an improvement  
20 in trailing months EBITDA goes from 5.9 to 6.3; correct?

21 A. Correct.

22 Q. That's an indication that that business is performing well  
23 over that period; correct? It's increased its trailing 12  
24 months EBITDA over the period; right?

25 A. Between those two periods it has.

Vomero - Cross

19

1 Q. Now, again, dropping down to medical it goes from 2.2  
2 million to 3.0 million trailing 12 months EBITDA and again that  
3 indicates an increase in cash flow for that business; correct?

4 A. Yes.

5 Q. And that's also an indicator of strong performance for the  
6 business; right?

7 A. Correct.

8 Q. In the next column, the valuation columns, you derive  
9 those columns by multiplying the trailing twelve months EBITDA  
10 by the applicable multiple; right?

11 A. Yes.

12 Q. And let's actually start with medical. Medical you  
13 show -- at 31 March '08 you show value of \$21.3 million;  
14 correct?

15 A. Correct.

16 Q. And you have that increasing to, is it 23.6 at the end of  
17 December?

18 A. Yes.

19 Q. So you've got roughly a ten percent increase in value from  
20 March to December 2008; correct?

21 A. Correct.

22 Q. And then you do it again with your February number and you  
23 still come out just a little bit better than it started in  
24 March; right?

25 A. Yes.

Vomero - Cross

20

1 Q. That indicates that the medical business in your analysis  
2 has not lost any value over the course of the Chapter 11 cases;  
3 correct?

4 A. Correct.

5 Q. Now, the 21.3 at the end of March, that is more or less  
6 the same time period in which the company had an offer from  
7 Trummer Board to buy the medical business for \$32 million;  
8 right?

9 A. Yes.

10 Q. Let's move up to insulators for a second, and the  
11 valuation numbers that you get, 37.5 million in March, that's  
12 derived by multiplying the March EBITDA by the applicable  
13 multiple; right?

14 A. Correct.

15 Q. And you use the blended multiple there; right? You  
16 blended it to account for both OEM business and insulators and  
17 aftermarket business and insulators; right?

18 A. Correct.

19 Q. Then the same thing applies for the December and February  
20 valuations, correct, you just multiply the trailing twelve  
21 months EBITDA times the applicable multiples; right?

22 A. Yes.

23 Q. Now, the insulator's cash flow has increased over the  
24 March to December period and I take it for the February period  
25 you didn't calculate any change in trailing 12 months EBITDA,

Vomero - Cross

21

1 did you?

2 A. No.

3 Q. So your indication of value declining from 37.5 million to  
4 32.6 in December and 30.5 in February, that's due solely to the  
5 changes in the multiples; right?

6 A. Yes.

7 Q. And the multiples are derived from the equity values as  
8 you've indicated, right, so you see equity values going down  
9 and that's what's driving the decline in your view in the value  
10 of the insulators business; right?

11 A. Yes.

12 Q. Let's look at connector seals. You've got the trailing 12  
13 months EBITDA essentially disappearing going from 2.8 to  
14 \$200,000.00; correct?

15 A. These were the company's numbers, but yes.

16 Q. The valuation you've got \$24.2 million at March. That's  
17 based on application of your multiples; correct?

18 A. Correct.

19 Q. Then you take it down to 4.8 in December. That's no  
20 longer a multiple derived valuation; correct?

21 A. Correct.

22 Q. You've taken it down to what you consider to be  
23 liquidation value?

24 A. It's an adjusted asset based method.

25 Q. More or less equivalent to liquidation value?

Vomero - Cross

22

1 A. Similar methods. You may get similar results but somewhat  
2 different thinking but it's an adjusted asset base.

3 Q. And you just carry that through to the February valuation;  
4 right?

5 A. Correct. Because we didn't have the data.

6 Q. And your methodology is exactly the same with respect to  
7 metals. You start with a multiple-derived value in March and  
8 then take that down to, as you've indicated, fair market value  
9 of the assets in December and February; right?

10 A. That's not correct.

11 Q. How do you derive those numbers?

12 A. You used an asset based approach throughout for metals.

13 Q. When you say an asset based value throughout --

14 A. The same methodology as we've discussed. The methodology  
15 is consistent for metals. It's an asset based -- an adjusted  
16 asset based approach.

17 Q. Consistent with connector seals?

18 A. Yes. We didn't use an EBITDA multiple for March.

19 Q. Now, those values, the connector seal value of 4.8 and the  
20 metals value of 6.6, you would not expect those to decline any  
21 further; correct?

22 A. As of the valuation date I think these values are fair. A  
23 large part of the values in this business is the real estate  
24 and the machinery equipment. So fair values change over time  
25 and you re-go to revalue them at a later date the values could

Vomero - Cross

23

1 change. So --

2 Q. Let me ask it this way. You would not expect to see  
3 significant declines in those values given how close they are  
4 to what would approximate a liquidation value for those two  
5 businesses; correct?

6 A. It depends on how the market value of real estate changes,  
7 so I really can't answer that. It's only because I can't  
8 answer what the stock price of one of these companies is going  
9 to be in the future.

10 Q. Have you done any assessment of the values of the debtors'  
11 real estate and equipment apart from the estimates that you  
12 provided here?

13 A. Over the course of the last couple of years I've ran  
14 through some appraisals, that's the extent of the analysis, the  
15 book values of the assets.

16 Q. You're not a real estate appraiser; correct?

17 A. Correct.

18 Q. And you're not an equipment appraiser in any sense; right?

19 A. Correct.

20 Q. So your opinions with respect to any potential decline or  
21 further decline of those values is limited to your sense that  
22 market values might change, they might not change; right?

23 A. Correct.

24 Q. Now, your valuation -- you have not done any precedent  
25 transaction analysis for your valuation; correct?

Vomero - Cross

24

1 A. We considered it but it's -- we considered precedent  
2 transactions but didn't feel it was reasonable.

3 Q. You couldn't reach a conclusion on value based on  
4 precedent transactions; right?

5 A. Based on our research we didn't find any transactions that  
6 were close enough to our valuation date and close enough to the  
7 debtors' business to include it in the analysis.

8 Q. You haven't provided discounted cash flow valuation;  
9 correct?

10 A. In this -- no, I haven't provided it.

11 THE COURT: Did you do a DCF analysis? I know it's  
12 not in your report but I'd like to know whether you did a DCF  
13 analysis.

14 THE WITNESS: I did not do a DCF analysis.

15 THE COURT: Why not?

16 THE WITNESS: Two primary reasons. The first is the  
17 unpredictability of the cash flow and having the poor forecast  
18 made it very challenging to project out the cash flow. The  
19 second reason is we were measuring. We wanted to measure  
20 changes in value. The DCF, the main parameters in the DCF  
21 primarily terminal value and then the beta that drives the cost  
22 and capital are based on market comps anyways. So as we  
23 measured the changes in those comps we felt, I believe, that  
24 we've captured the changes in value. So those are the two  
25 reasons.



Vomero - Cross

25

1 Q. Now, you've indicated that the unpredictability of the  
2 cash flow is a factor in your decision not to do a DCF. But,  
3 in fact, the medical business has had relatively stable cash  
4 flow; correct?

5 A. Correct.

6 Q. And it's performing reasonably close to projections;  
7 correct?

8 A. Over what time period?

9 Q. Well, let's just say the last year.

10 A. To what budget? My understanding is they missed the --  
11 EBITDA by 20 percent. So I wouldn't agree with that statement  
12 at all.

13 Q. You think a twenty percent miss on EBITDA is sufficient --  
14 is such a variation that you couldn't do a discounted cash flow  
15 on that value?

16 A. I think given my history with the forecast inaccuracy I'd  
17 say yes, I just couldn't get comfortable with the numbers that  
18 I was given.

19 Q. The insulators business is also performing reasonably  
20 well; correct?

21 A. Not currently. Not currently. I wouldn't agree with  
22 that.

23 Q. By currently you mean --

24 A. The last five months -- four, the last four months.

25 Q. January and February -- excuse me, January, December,

Vomero - Cross

26

1 November, October?

2 A. Yes.

3 Q. That conclusion is notwithstanding your own data showing  
4 an increase of \$400,000.00 in trailing twelve months EBITDA for  
5 the insulator's business?

6 A. That's correct.

7 Q. For purposes of your valuation, Mr. Vomero, you have not  
8 assumed that any of the debtors' businesses would be sold  
9 separately; right? You've assumed sale of the entire  
10 enterprise?

11 A. That's correct.

12 Q. Are you familiar, sir, with the concept of a controlled  
13 premium in valuation work?

14 A. Yes.

15 Q. You understand as a general sense a publicly-traded  
16 comparable value derives a value to acquire a minority interest  
17 in a company; right?

18 A. Correct. And it also has a liquidity premium.

19 Q. You understand to acquire all the shares of a company or  
20 all the equity of a company that it would be typical for a  
21 buyer to pay a premium for that; right?

22 A. Depends on the situation.

23 Q. It's certainly not uncommon for a buyer to have to pay a  
24 premium to acquire a controlling interest in a company. Is  
25 that right, sir?

Vomero - Cross

27

1 A. It happens.

2 Q. In fact, if you went out and tried to buy all the stock of  
3 a publicly-traded company in all likelihood you would have to  
4 pay more than the share price for buying one share or a hundred  
5 shares in the market today; right?

6 A. Generally speaking, yes.

7 Q. The range of that premium could be 25 to 30 percent;  
8 correct?

9 A. I don't know. I really don't.

10 Q. You haven't done any assessment?

11 A. No, I have not.

12 Q. And you've not analyzed control premiums in the auto  
13 market -- excuse me, the auto parts market; right?

14 A. Correct.

15 Q. What you're suggesting with respect to the medical  
16 business, with respect to a prospective sale of the medical  
17 business, is that the debtor should sell that business into a  
18 market where multiples are falling; is that right?

19 A. Multiples have fallen.

20 Q. What does your latest data indicate? It indicates that  
21 multiples are continuing to fall, right, and that's illustrated  
22 by your February value; right?

23 A. Correct.

24 Q. Let me focus on your trailing twelve month EBITDA numbers.  
25 Let's start with insulators. You've got -- at December '08

Vomero - Cross

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1 you've got trailing 12 month EBITDA at \$6.3 million for that  
2 purpose. Let me ask you if I could to pull up the debtors'  
3 exhibit binder and turn with me to Debtors Exhibit 13 in  
4 evidence.

5 A. 13?

6 Q. Yes.

7 A. I don't think I have the debtors'.

8 Q. It should be the other smallish binder. Have you got it?

9 A. Okay.

10 Q. Are you with me?

11 A. Yes.

12 Q. Debtors' Exhibit 13 in evidence, the middle column 2008  
13 actual numbers. For the insulators business it shows \$7.9  
14 million of EBITDA and you've got 6.3 in your analysis for  
15 December; correct?

16 A. Yes.

17 Q. What accounts for the difference between 6.3 and 7.9?

18 A. It's the allocation of corporate overhead.

19 Q. So you've allocated roughly \$1.6 million of overhead to  
20 the insulator's business?

21 A. Roughly.

22 Q. Mr. Vomero, do you believe that a buyer of the insulator's  
23 business would acquire the negative cash flow associated with  
24 the corporate overhead?

25 A. I can't answer that question but what I can say is that

Vomero - Cross

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1 the insulator business is, in essence, subsidizing corporate  
2 costs. So it's a definite expense on their books that's just  
3 not recorded in the end to reflect that cost. So in order to  
4 deal with that it's about \$2 million annually. We assigned it  
5 to the core assets based on their EBITDA contribution.

6 THE COURT: How did you allocate overhead, on the  
7 basis of percentage of total EBITDA?

8 THE WITNESS: Correct. The assumption is the --  
9 they're the ones that have the financial wherewithal to --

10 THE COURT: I'm just trying to understand. I just  
11 want to know what methodology --

12 THE WITNESS: That's what I used, yes. And I would  
13 add that in the comparables they have that segment of corporate  
14 overhead in their EBITDAs.

15 BY MR. STROCHAK:

16 Q. Let's do the same comparison with respect to medical.  
17 Your December '08 trailing 12 months EBITDA for medical is 3.0  
18 and if you look at Debtor's Exhibit 13, the debtors have 3.9.

19 A. Okay.

20 Q. The difference between your 3.0 and the debtors' 3.9 again  
21 is the corporate overhead?

22 A. That's part of it. We added some items back to their  
23 EBITDA on a pro forma so that that's in our numbers as well.  
24 We had a positive add back.

25 Q. You mean roughly the \$600,000.00 add back; right?

Vomero - Cross

30

1 A. It's six or seven, yes. Correct.

2 Q. And that's already in your three, correct, your 3.0?

3 A. Correct.

4 Q. If you look at the bottom of Exhibit 13 you'll see the  
5 footnote. In fact, the debtors have added that into their 3.9  
6 number for medical adjustments of \$488,000.00 and \$190,000.00;  
7 correct?

8 A. Correct.

9 Q. Those correspond to the same adjustments that you've made;  
10 right?

11 A. Yes. The insurance estimate we were given was 150 and  
12 this has 190.

13 Q. So you have allocated another \$900,000.00 or so to the  
14 corporate overhead to the medical EBITDA number; right?

15 A. Correct.

16 Q. So you've got 1.6 in insulators and \$900,000.00 in  
17 medical. So roughly \$2.5 million of overhead; right?

18 A. Correct.

19 Q. Now, you've made zero allocation or close to zero  
20 allocation of the corporate overhead to the connector seals in  
21 the metals businesses; right?

22 A. Correct.

23 Q. So, in effect, sir, isn't what you have done -- isn't it  
24 correct that what you've done is you have allocated the  
25 corporate overhead to the two businesses, insulators and

Vomero - Cross

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1 medical, that have higher multiples in your valuation analysis;  
2 right?

3 A. They had higher cash value and the concept was they're the  
4 only ones that could have the financial wherewithal to pay for  
5 those costs. So that was the basis. It wasn't -- did I answer  
6 your question correctly?

7 Q. You did answer my question. The answer is yes, you put it  
8 in insulators and medical.

9 A. Right.

10 Q. But you have the higher multiples; correct?

11 A. Hold on.

12 [Pause in proceedings.]

13 A. That wasn't the case in March where connector seals had a  
14 higher multiple than the aftermarket -- than insulators. So  
15 it's -- right. So we're consistent through the period.

16 Q. You used your 7.2 multiple for connector seals in March.

17 A. Yes. The multiple had nothing to do with how we did it.

18 Q. Let me turn to your sensitivity analysis which is in  
19 Appendix E, Page 43 of Exhibit A.

20 A. Okay.

21 Q. Let me start again and make sure I understand what you've  
22 done here. Is it correct, sir, that what you've done is you  
23 analyzed January '09 sales data in order to get a sense as to  
24 what's going on with the business currently and its potential  
25 effect on value; is that right?

Vomero - Cross

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1 A. That's fair.

2 Q. Now, you did not have -- at the time you did your  
3 sensitivity analysis you did not have EBITDA value for January;  
4 right?

5 A. Correct.

6 Q. But you did have sales numbers; right?

7 A. Yes.

8 Q. So looking at your analysis in the table on Page 43 of  
9 Exhibit A, working across the first line for the medical you've  
10 got fiscal year '08 revenue EBITDA and EBITDA margin figures;  
11 right?

12 A. Correct.

13 Q. That's 16.2 million in medical revenue; 3.7 million in  
14 medical EBITDA resulting in an almost 23 percent margin; right?

15 A. Yes.

16 Q. Let me just ask you that. That's a fairly robust margin in  
17 this industry; correct?

18 A. In the industry -- can you define the industry?

19 Q. Yes. Medical parts. Medical parts for the medical  
20 industry.

21 A. It's a reasonable margin. I don't know if it would say  
22 it's high. It's reasonable.

23 Q. You haven't done any particular analysis of margins in  
24 that industry, in the medical parts industry, have you?

25 A. No, I have not.



Vomero - Cross

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1 Q. Now, you -- the next line down is January '09 growth and  
2 you've got ten percent in there. That represents the revenue  
3 growth for January '09 over last year; right?

4 A. I think it was eight percent but I used ten for the  
5 analysis.

6 Q. Round numbers, okay. And that results in an incremental  
7 change of revenue of 1.6 million; right?

8 A. Correct.

9 Q. Then you calculate that -- that results in an increase in  
10 EBITDA of \$800,000.00; right?

11 A. It's that plus an increase in the gross margin rate to 25  
12 percent. So there's two components to that change.

13 Q. The bottom line though is that what you're seeing is an  
14 increase of -- an increase of EBITDA by \$800,000.00; right?

15 A. It's what this sensitivity analysis was done, on an annual  
16 basis.

17 Q. That's on an annual basis.

18 A. Under these assumptions.

19 Q. Now, then you then calculate -- you use your pure multiple  
20 of 7.1 times and what you calculate then is incremental value  
21 of \$5.4 million; right?

22 A. Correct.

23 Q. So what your sensitivity actually shows is that based on  
24 January revenue performance for the medical business you  
25 actually think that it's increased by \$5.4 million in value;

Vomero - Cross

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1 right?

2 A. The results of this analysis if they were to hold true. I  
3 would want to see a couple more months of demonstrated  
4 performance but in essence that's what this sensitivity was  
5 trying to capture.

6 Q. Well, we all would like to see better performance but you  
7 can't predict the future.

8 A. Right. But I want to use current data and said what if  
9 today, what if in January if that held true did the analysis.

10 Q. Now, you did the same analysis for insulators; correct?  
11 Again, working across your chart you've got '08 revenue of  
12 \$32.3 million; right?

13 A. Correct.

14 Q. And EBITDA of \$7.8 million; right?

15 A. Correct.

16 Q. Again, a margin of 21 percent again. I'm correct, am I  
17 not, that 21 percent is a fairly robust margin for a company in  
18 the automotive parts business; right?

19 A. In the automotive parts business as in -- well, this is  
20 without corporate overhead in it. So you kind of don't get a  
21 good comparison when you look at the comps. It's kind of not a  
22 fair comparison without the corporate overhead. So as it  
23 stands it's a good margin I would say, yes. It's a good  
24 margin, sure.

25 Q. Now, you show January '09 growth at -- off 20 percent;

Vomero - Cross

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1 right?

2 A. Yes.

3 Q. That reflects declining revenues as a result of the  
4 distress in primarily the OEM market; right?

5 A. Correct.

6 Q. So what you're showing there is incremental change to  
7 annual revenue of \$6.5 million; is that right?

8 A. Correct.

9 Q. Then you've calculated incremental change to EBITDA of  
10 negative 1.4 million; right?

11 A. Correct.

12 Q. That's on an annual basis; right?

13 A. Correct.

14 Q. So we're talking a little bit -- maybe \$125,000.00 per  
15 month if we divide it by 12 roughly \$125,000.00 or so,  
16 \$120,000.00 maybe?

17 A. Roughly. On a monthly basis.

18 Q. Now, you would agree with me, sir, that if actual EBITDA  
19 for January was much greater, it increased that that would in  
20 fact show increased value under your sensitivity analysis;  
21 right?

22 A. Correct.

23 Q. So you just extrapolated from the actual revenue data that  
24 you have to what you think the EBITDA could be based on that  
25 revenue?

Vomero - Cross

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1 A. Correct.

2 Q. Again, if actual EBITDA is different, for example if the  
3 actual EBITDA increased you would reflect increased value;  
4 right?

5 A. Correct.

6 MR. STROCHAK: Your Honor, I have one further exhibit  
7 that's not in the binder. I can hand it up.

8 [Pause in proceedings.]

9 THE COURT: I'll mark this as Exhibit 17?

10 MR. STROCHAK: Yes.

11 (Debtors Exhibit 17, Marked.)

12 Q. Mr. Vomero, I've given you Debtor's Exhibit 17 which I  
13 will represent to you is an income statement for the Jasper,  
14 Georgia plant for January 2009. We were able to get this  
15 overnight. So I don't think you've seen it before but I will  
16 represent to you that that's what it is.

17 If you look with me on the gross cash flow line, it's  
18 about two-thirds of the way down the page under the bold  
19 heading cash flow data it shows actual cash flow of \$642,000.00  
20 for January '09 as compared to prior year -

21 THE COURT: Could you put it on the screen? I don't  
22 see it. Why don't you put it on the screen?

23 [Pause in proceedings.]

24 Q. I was just saying it shows actual gross cash flow of  
25 \$642,000.00 for January '09 and its comparison to the prior

Vomero - Cross

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1 year and the same line and table shows \$668,000.00. Are you  
2 with me?

3 A. Yes.

4 Q. You would agree, sir, that the gross cash flow line is  
5 equivalent to what we've been talking about as EBITDA; correct?

6 A. Correct.

7 Q. So assuming that these results are correct, and I realize  
8 you just got this and you haven't had a chance to review it,  
9 but assuming that these are correct numbers for what the  
10 company actually did in January it does not suggest a twenty  
11 percent decline in EBITDA, does it, sir?

12 A. No, it does not.

13 Q. It suggests the decline in EBITDA of only about 25 or  
14 \$26,000.00; right?

15 A. Correct.

16 Q. Now, if the monthly decline in EBITDA is only about  
17 \$25,000.00 as opposed to the 20 percent decline that you have  
18 in your sensitivity analysis, what does that do to the  
19 incremental value calculation?

20 A. The negative would basically go away.

21 Q. It would show positive value based on January performance;  
22 correct?

23 A. That's correct.

24 THE COURT: Why did you do your sensitivity analysis?

25 THE WITNESS: Because I did -- I used the trailing 12

Vomero - Cross

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1 months. I wanted to -- and I had January data. I wanted to  
2 see how that would influence the trailing 12 to see what the --  
3 because there was growth in medical. There was a decline in  
4 insulators and I wanted to see what the effect of that would  
5 have and whether an adjustment would have been warranted. Even  
6 in the insulators when I got the EBITDA numbers I had mapped  
7 the change in sales to change in EBITDA. So that's kind of how  
8 I got comfortable doing that.

9 The results came out negative so I didn't make an  
10 adjustment.

11 THE COURT: You didn't make the adjustment?

12 THE WITNESS: Yes, right. But with this data I would  
13 -- but the results for change I would have done the same  
14 analysis had I had the data and it would have come out positive  
15 I thought, yes.

16 BY MR. STROCHAK:

17 Q. Now, just going back to something you said earlier,  
18 Mr. Vomero. You indicated that you thought medical had missed  
19 its forecast by approximately twenty percent.

20 A. In 2008.

21 Q. So comparing -- how did you arrive at that calculation?

22 A. The year budget, I think the budget we got in January.

23 THE COURT: January of what year?

24 THE WITNESS: January -- I'm sorry. January of 2008.  
25 It was the annual budget versus the July budget.

Vomero - Cross

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1 BY MR. STROCHAK:

2 Q. But you haven't included that analysis in your report;  
3 correct?

4 A. No, I -- well, yes. It was a subset of the -- our overall  
5 assessment of the forecast.

6 Q. Point me if you could to where in your report it  
7 demonstrates a twenty percent decline in -- excuse me, a 20  
8 percent miss in the EBITDA -- excuse me. Let me just start  
9 again.

10 Is there a place in your report where you detail your  
11 assessment that medical missed its forecast by 20 percent in  
12 2008?

13 A. I don't believe there is one in the report but I -- look,  
14 I considered it.

15 Q. Assume for me that it was not twenty percent off, that it  
16 was more in the range of five, six, seven percent off, does  
17 that change your conclusion at all about the wisdom of using a  
18 DCF, a discounted cash flow analysis for valuation purposes for  
19 that business?

20 A. No, it doesn't. I'm comfortable with the analysis in as  
21 it came out because we've used good current data and good  
22 market comps. So I'm fairly comfortable with the approach  
23 we've taken.

24 Q. You're comfortable with the one method you've chosen  
25 without testing it against any other methods; is that right?

Vomero - Cross

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1 A. Correct.

2 Q. Let me turn to the connective seals consolidation. You  
3 indicated yesterday I believe that you thought it was a good  
4 idea and you thought the company should go ahead and do it;  
5 right?

6 A. Correct.

7 Q. Now, you haven't reached out and spoken directly to any of  
8 the debtor's customers involved in the connector seals  
9 business; correct?

10 A. Correct.

11 Q. You haven't done any analysis of the specific molds that  
12 are used to make these products that the debtors are  
13 considering moving to other facilities; right?

14 A. Correct.

15 Q. You haven't done any analysis of what other companies in  
16 the industry might be able to produce products by using those  
17 molds; right?

18 A. Correct.

19 Q. Now, we discussed yesterday I believe the PPAP's process,  
20 the pre-production approval process and that's I think -- to  
21 summarize that's the certification process that you have to go  
22 through in order to get a part approved for production; right?

23 A. Correct.

24 Q. You don't know how long it would actually take to do PPAPs  
25 for any of the particular parts that the debtors are



Vomero - Cross

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1 considering moving; right?

2 A. Not specifically.

3 Q. You have a general sense but not a specific sense; right?

4 A. That's correct.

5 Q. And you haven't done any particular analysis of PPAP  
6 timing issues; right? You haven't studied how long it's taking  
7 parts manufacturers to get PPAPs done in the current  
8 environment or anything like that; right?

9 A. Correct.

10 Q. Now, you have indicated in your report that if customers  
11 resourced these products to a different company that, in fact,  
12 that would take quite some significant time in order to get  
13 them certified again; right?

14 A. I think my understanding is the process is the same. I  
15 mean if they're recertifying they would recertify the -- oh. I  
16 understand what you're saying.

17 Can you repeat the question?

18 Q. Yeah, sure. Let me rephrase it actually. You've  
19 indicated in your report on Page 17 that the PPAP approval  
20 process can take a significant amount of time, right?

21 A. Correct.

22 Q. And that would be true if our customers decided to  
23 resource products away from the debtors, right?

24 A. Correct.

25 Q. And, in fact, isn't it correct that it would likely take

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1 longer to get through the PPAP process if a customer was going  
2 to move a part to an entirely new company, as opposed to moving  
3 an existing mold operated by Lexington to a different Lexington  
4 plant?

5 A. I think it's customer-by-customer specific. Generally the  
6 way, you know, seen automotive parts move and generally, you  
7 know, a three-month bank is sufficient to move it whether  
8 you're doing an internal change or an external change; that's  
9 my experience.

10 THE COURT: Mr. Vomero, who owns the molds? Is it is  
11 the customer or is it the -- Lexington?

12 THE WITNESS: It's the customer's except in the after  
13 market where Lexington will develop a mold to replicate a part.  
14 That's my understanding, yes.

15 BY MR. STROCHAK:

16 Q. Now, if a customer decided to resource its part rather  
17 than move it with Lexington to the different plant they would  
18 still need that inventory, correct, in order to get them  
19 through the PPAP process at the new plant.

20 A. If they didn't have it already on hand, so I don't -- you  
21 know, it's a difficult question to answer.

22 Q. But they still would need some inventory, right? Assuming  
23 they're still using the product, using the part, supplying the  
24 part to their own customers, they are going to need that part,  
25 right?

Vomero - Cross

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1 A. That part? Well, of course they're going to need the  
2 part.

3 Q. So either they have it in their current inventory or  
4 they're going to have to buy it from Lexington in order to  
5 prepare for the three months or so PPAP process in order to get  
6 a new supplier certifier, right?

7 A. Correct.

8 Q. And you haven't done any analysis of the debtors'  
9 customers to figure out how much inventory they actually have  
10 of any particular parts, right?

11 A. Correct.

12 Q. Now, what's been going on in the market generally isn't it  
13 correct, sir, that as a general matter auto parts suppliers  
14 have been taking their inventories down, right?

15 A. I don't -- I haven't analyzed it specifically. With  
16 respect to Lexington the inventory is relatively high because  
17 the demand has fallen off so quickly in a historical sense so I  
18 haven't analyzed it specifically, but I don't -- wouldn't  
19 necessarily hold that to be true. I don't have a specific  
20 answer for you.

21 Q. I think I understand you.

22 A. But I don't think that's necessarily a fair question.

23 Q. Sir, your answer is you don't have any general sense as to  
24 what's going on in the industry, correct?

25 A. I have a general sense, but not a specific sense. Yes.

Vomero - Cross

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1 Q. And the general sense, correct, is that suppliers are  
2 taking inventories down, right?

3 A. No, my general sense is they're trying to but the demand  
4 has fallen off so quickly that there is fairly significant  
5 amounts. But they're -- they're always trying. It's a just-  
6 in-time system through our -- yes, so --

7 Q. And then turning to the specific you haven't done any  
8 particular analysis of inventories of any of the specific parts  
9 that the debtors might make for their customers in the  
10 connector seals business, right?

11 A. Correct.

12 Q. Mr. Vomero, you don't believe that the auto build numbers  
13 that we've seen in December and January, that is, the very low  
14 numbers are going to continue indefinitely, right?

15 A. Indefinitely? In -- I think there'll be -- at some point  
16 in the future there'll be a rebound.

17 Q. At some point someone is going to build an automobile in  
18 the United States, right?

19 A. Let's hope.

20 Q. So production levels -- isn't it correct, sir, that  
21 production levels are going to go up from what we're seeing in  
22 December and January at some point?

23 A. At some point it's probable.

24 MR. STROCHAK: Your Honor, could I ask the Court's  
25 indulgence for just a minute or two to look up some notes?

Vomero - Cross

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1 THE COURT: Sure.

2 [Pause in the proceedings.]

3 MR. STROCHAK: Thank you, Your Honor. I appreciate  
4 the Court's indulgence. I have no further questions.

5 THE COURT: Thanks very much.

6 MR. BRACHT: Your Honor, I have a few.

7 THE COURT: Go ahead, Mr. Bracht. Do you need any  
8 water, Mr. Vomero?

9 THE WITNESS: No. No, thank you.

10 CROSS-EXAMINATION

11 BY MR. BRACHT:

12 Q. Good morning, Mr. Vomero. My name is Jerry Bracht. I  
13 represent the Committee. Mr. Vomero, did you have some input  
14 into the plan, so to speak, that's proposed in Cap Source's  
15 objection with respect to cash collateral?

16 THE COURT: I don't understand your question.

17 BY MR. BRACHT:

18 Q. There's a -- there are some suggestions in the cash  
19 collateral objection that the agents filed that set forth  
20 various provisions concerning what the Cap Source feels like  
21 would be an appropriate way to proceed. Did you have any input  
22 into those?

23 A. General. General input.

24 Q. Okay.

25 A. Not specific.

Vomero - Cross

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1 Q. Part of that plan, as I understand it, includes an  
2 immediate, for lack of a better word, sale of what is referred  
3 to as the noncore assets. Is that true?

4 A. Yes.

5 Q. And that would include the metals business?

6 A. Yes.

7 Q. And I know we've talked a lot about it. I haven't gotten  
8 it clear in my mind as far as you are concerned. Do you have  
9 an opinion sitting here today what would likely -- what the  
10 proceeds would likely be of a sale of a noncore assets  
11 including metals?

12 A. Not in aggregate. Don't have a sense for what the land in  
13 Georgia and -- would be worth.

14 Q. Okay.

15 A. That's one piece. Metals we did an adjusted asset-based  
16 approach which we can look up the number. It was in the six --  
17 five to seven million-dollar range. It was a reasonable range.

18 Q. Well, I understand you did an asset-based approach, but --

19 A. Yeah.

20 Q. -- is it in your opinion that in a sale process in this  
21 environment that that amount of money is likely to be received  
22 in a sales process of those assets?

23 A. I think that's the value of those assets. It can be  
24 realized. Yeah, I think that those assets over time could be  
25 realized at that amount.

Vomero - Cross

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1 Q. That is your opinion?

2 A. Yeah, that would be my -- yes.

3 Q. Okay. But in terms of an aggregate value you don't have  
4 an opinion with respect to an aggregate value for all of those  
5 assets?

6 A. Correct.

7 Q. Okay. Same question. The plan as I understand it  
8 includes a -- in essence, a deadline for the debtors to obtain  
9 exit financing. If it's not done by June then the plan would  
10 be to proceed with the sale of the medical business. Is that  
11 your understanding?

12 A. Generally.

13 Q. Okay. And same question with respect to the medical  
14 business. Do you have an opinion sitting here today as to what  
15 the proceeds of a sale of the medical decision would be  
16 pursuant to the plan proposed by Cap Source?

17 A. We have our valuation, you know. It's established a value  
18 for it so I think that's a reasonable value.

19 THE COURT: Did you establish a value for the medical  
20 business sold as a separate --

21 THE WITNESS: Oh, I'm sorry.

22 THE COURT: Anyhow, I thought you said you didn't --

23 THE WITNESS: No, I didn't. That's correct. That's  
24 correct. I did not. I did not do that. It's as a base line  
25 to the base line value but, no, I did not value it separately.

Vomero - Cross

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1 THE COURT: Now, you can all handle --

2 THE WITNESS: Yes, so --

3 THE COURT: -- your case the way you want but I don't  
4 read this report as giving his opinion of value of any of the  
5 components of the business.

6 Mr. Strochak, if you want to let him go on with this,  
7 I'll fine but I'll just tell you how I read this thing.

8 MR. STROCHAK: And that's accurate, but I was --

9 THE COURT: I'm not crediting his testimony with  
10 respect to value of components in this.

11 MR. BRACHT: Okay. I just wanted to -- you know,  
12 whatever the answer is I just wanted to get clear in my mind.

13 BY MR. BRACHT:

14 Q. If the plan as proposed by Cap Source were to proceed  
15 according to plan -- pardon me -- what would be left?

16 A. Insulators. I'm sorry. Yes, the insulator business.

17 Q. Just the insulator business?

18 A. And some assets, the residual Vienna facility if the --

19 Q. Do you have any opinion sitting here today whether or not  
20 the sale of the assets as proposed by Cap Source would satisfy  
21 the amount of debt that Cap Source is owed?

22 A. I haven't done that specific analysis.

23 Q. Do you have any opinion as to whether or not the proceeds  
24 of the sale of those assets as proposed by Cap Source would  
25 give any value to the sub debt to the Committee?



Vomero - Cross/Redirect

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1 A. I haven't done that analysis.

2 THE COURT: All right. Mr. Tishler?

3 REDIRECT EXAMINATION

4 BY MR. TISHLER:

5 Q. Mr. Vomero, isn't it your understanding that the reason  
6 we're asking to do a market test as part of our request in the  
7 cash collateral is to determine to some extent what a sale of  
8 the medical device business would bring?

9 A. That's correct.

10 MR. TISHLER: Thank you.

11 THE COURT: Anybody else have any further questions?

12 MR. STROCHAK: Nothing further, Your Honor.

13 THE COURT: All right. Mr. Vomero, you're excused.

14 THE WITNESS: Thank you.

15 THE COURT: All right. It's 10:22. We're going to  
16 take a ten-minute recess. And who's -- do you have another  
17 witness, Mr. Tishler?

18 MR. TISHLER: No, Your Honor. I just have one. I  
19 wanted to go ahead and put into evidence the --

20 THE COURT: All right. Let's do that now.

21 MR. TISHLER: Those numbers. Yeah.

22 THE COURT: Why don't you -- what did you want to put  
23 in evidence?

24 MR. TISHLER: What we looked at yesterday that shows  
25 the EBITDA at the end of last year.

1 THE COURT: Did you clear the confidentiality issue  
2 with --

3 MR. TISHLER: It was fine with the debtors. We've  
4 got an exhibit.

5 THE COURT: Okay.

6 MR. STROCHAK: No objection, Your Honor.

7 MR. TISHLER: And I also wanted to move into evidence  
8 Mr. Altineau's deposition designations in our record.

9 THE COURT: Let's do it when we come back from break.

10 MR. TISHLER: Okay.

11 THE COURT: Okay. We'll treat those exhibits. I  
12 want to be sure that I have -- you know, I have -- with the  
13 Altineau deposition I've got the Committee's designations. I  
14 don't have a single document that has everybody's designations,  
15 counter designations. And so what I'm going to ask is -- did  
16 you have designations in that?

17 MR. STROCHAK: Your Honor, our suggestion was to put  
18 the whole transcript in.

19 THE COURT: I don't allow that. I really don't allow  
20 that. I'm not reading -- I read everything that's in evidence.  
21 I do not read transcripts front to back. Unless -- you know,  
22 if that's what people have designated I don't -- I just don't  
23 do it. I make it clear I don't allow people to dump deposition  
24 transcripts into the record.

25 I read all of the Committee's designations. It was

1 easy to follow. They were highlighted in yellow. They were in  
2 a separate binder. If people have counter designations or  
3 objections, you know, what I'd like to have and I didn't ask  
4 the people to do that is to have a single mark, use different  
5 highlighters, and -- but I just don't -- I don't permit people  
6 to dump depositions in.

7 Ten-minute recess.

8 (Off the record.)

9 THE COURT: Please be seated. All right.  
10 Mr. Tishler, you wanted to introduce some exhibits.

11 MR. TISHLER: Yes, Your Honor, thanks. Your Honor,  
12 this is from yesterday's testimony and this is the preliminary  
13 summary of net sales offering profits and margins that was  
14 provided to Capital Source by Lexington Precision from which we  
15 calculated our end of 2008 EBITDA number. So I'd like to offer  
16 that as the lender's next exhibit.

17 THE COURT: Been marked as PSLG.

18 MR. TISHLER: Yes. Yes, Your Honor.

19 THE COURT: Any objections?

20 MR. STROCHAK: No objection, Judge.

21 THE COURT: All right. Exhibit PSLG is in evidence.

22 (Committee Exhibit PSLG is admitted.)

23 MR. TISHLER: And then, Your Honor, we are  
24 highlighting our excerpts from the Capital One deposition and  
25 we will hand that up as soon as we get that done. And we would

1 move the admission of those deposition excerpts into evidence.

2 THE COURT: Have you shown what you're offering to --

3 MR. TISHLER: It was attached to our -- it's just --  
4 we're just highlighting now --

5 THE COURT: All right.

6 MR. TISHLER: We had already designated it in our  
7 witness exhibit list.

8 MR. STROCHAK: We don't have any objection to the  
9 deposition, Your Honor.

10 THE COURT: All right. You know, what would be more  
11 helpful, Mr. Tishler, and I -- do you have designations as  
12 well, Mr. Strochak?

13 MR. STROCHAK: Let me just address that, Your Honor.  
14 We were going to counter designate substantially the whole  
15 deposition. You know, I don't mean to cause any additional  
16 work for the Court. I understand that Your Honor would prefer  
17 a counter designation specifically and we're trying to get that  
18 done right now and we can get it to you as soon as we can. So,  
19 you know, at the Court's convenience I can either counter  
20 designate the whole thing or we can mark it to delete the  
21 handful of things that are unnecessary for the Court to read.

22 THE COURT: Maybe you didn't get the message. Go  
23 ahead and counter designate everything. If I look through it  
24 and I find stuff that the Court concludes shouldn't have been  
25 designated I will take appropriate action. I don't know what

1 it is yet, but the one thing I don't tolerate is people dumping  
2 transcripts. This isn't the biggest transcript in the world,  
3 but I don't permit it done.

4 You go ahead and do it and you'll bear the  
5 consequences, okay? Anything you designate that's appropriate,  
6 that's fine but don't tell me you're going to, you know --  
7 there's plenty of stuff in here that --

8 MR. STROCHAK: My only point, Your Honor, is that I  
9 just don't have a marked copy right now. So if I could ask the  
10 Court's indulgence to submit that subsequently we will go  
11 through and we will ensure Your Honor that there's nothing  
12 extraneous in there and I would ask the Court's indulgence to  
13 be able to do that.

14 THE COURT: Okay. Here's what I would like done.  
15 Mr. Bracht, did you give marked copies to everybody else?

16 MR. BRACHT: I did, Your Honor.

17 THE COURT: Okay. Take the Committee's marked copy.  
18 Take a different colored highlighter and that goes for the  
19 prepetition lenders as well. I'd like to have one transcript.  
20 Just tell me they used yellow. Each of you use a different  
21 color so I know what was each side's and each party's  
22 designations and then I'll go through.

23 I've already read because it was so easy to do. I  
24 just went through it and I read what the Committee designated.  
25 It was all highlighted in yellow. It was simple. That way

1 I'll go back and I'll read again whatever anybody else wants to  
2 designate.

3 MR. STROCHAK: We'll do that, Your Honor.

4 THE COURT: Okay.

5 MR. STROCHAK: And I apologize for any inconvenience.

6 THE COURT: All right. Have you given the other  
7 parties what your designations are or --

8 MR. STROCHAK: Your Honor, what I told the other  
9 parties is that we would just suggest putting the whole  
10 transcript in. I know Your Honor doesn't want to proceed that  
11 way. I didn't -- no one had any objection to proceeding that  
12 way, so I am assuming there are no objections to anything we  
13 would designate within the document.

14 THE COURT: Is that correct, counsel -- Mr. Bracht?

15 MR. BRACHT: Yes, Your Honor, I --

16 THE COURT: Or Mr. Tishler?

17 MR. BRACHT: -- will have no -- we will have no  
18 objections to any other designations.

19 THE COURT: Subject to seeing what gets marked, the  
20 designations and counter designations of the parties to the  
21 Altineau deposition as admitted into evidence.

22 MR. BRACHT: Okay. Your Honor, just to complete the  
23 housecleaning with respect to that issue there are a number of  
24 exhibits that are referenced in the designations that the  
25 Committee has made in Mr. Altineau's deposition. They are

1 listed on our exhibit list. I'd like to -- I don't believe  
2 there are any objections to those exhibits. I have a list of  
3 them. I can read it into the record or I can give you the  
4 list.

5 THE COURT: Well, why don't you read them off? I've  
6 got your --

7 MR. BRACHT: Okay.

8 THE COURT: I kept a copy of everybody's exhibit list  
9 separate.

10 MR. BRACHT: Okay.

11 THE COURT: I've been marking off when they're  
12 admitted into evidence.

13 MR. BRACHT: I -- the deposition exhibits from  
14 Mr. Altineau's deposition that are referenced and identified in  
15 the Committee's designations are listed on the Committee's  
16 exhibit list as Exhibits Q, R, S, T, U, V, W, X, Y, Z, AA, BB,  
17 CC, DD, EE, FF, GG, HH, II, JJ, KK, and LL.

18 THE COURT: And you're offering those?

19 MR. BRACHT: I'm offering those at this time, Your  
20 Honor.

21 THE COURT: Okay. Any objections?

22 MR. STROCHAK: No objection, Your Honor.

23 MR. TISHLER: No, Your Honor.

24 THE COURT: All right. Exhibits Q, R, S, T, U, V, W,  
25 X, Y, Z, AA, BB, CC, DD, EE, FF, GG, HH, II, JJ, KK, LL are all

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1 admitted into evidence.

2 (Committee Exhibits Q, R, S, T, U, V,

3 W, X, Y, Z, AA, BB, CC, DD, EE, FF,

4 GG, HH, II, JJ, KK, LL are admitted.)

5 THE COURT: Mr. Bracht, do you want to call a  
6 witness?

7 MR. BRACHT: Yes. Jessie Ultz of SRR.

8 THE COURT: If you'd raise your right hand.

9 (Jessie Ultz, witness for the Committee, sworn.)

10 THE COURT: Please have a seat.

11 DIRECT EXAMINATION

12 BY MR. BRACHT:

13 Q. Mr. Ultz, will you state your name, please, for the  
14 record?

15 A. Jessie Ultz with Scott Regis Ross [Ph.].

16 Q. How are you employed with Scott Regis Ross?

17 A. I'm a manager in the valuation and financial opinions  
18 group.

19 Q. And that's a company that we all refer to as SRR?

20 A. Correct.

21 Q. And is SRR the Committee's advisor -- financial advisor  
22 with respect to this matter?

23 A. We are.

24 Q. And have you been engaged as a part of that team since the  
25 beginning of the bankruptcy and maybe even prior?



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1 A. Yes.

2 Q. And are you familiar with various events and meetings and  
3 so on and so forth that have occurred through the case with  
4 respect to the debtor and other interested parties?

5 A. Yes.

6 Q. I'd like you to go over a few things with me very quickly,  
7 if we can, concerning various financial performance by the  
8 debtors. Have -- you received, I'm sure, over the course of  
9 this engagement a number of different forecasts and financial  
10 information documents from the debtors, have you not?

11 A. Yeah, we've received a lot of information.

12 Q. Okay. And have you been really primarily the one at SRR  
13 that's been responsible for kind of vetting that information  
14 and reviewing it and dealing with it?

15 A. Yeah, I would say I'm the point person on information  
16 collection and follow-up questions and kind of cataloguing and  
17 understanding what we have.

18 Q. In connection with that job have you -- have you become  
19 familiar with the monthly forecasts of Lexington, of the debtor  
20 and how those fore -- the forecasts themselves compare to  
21 actual results?

22 A. I have. We prepare that monthly.

23 Q. Okay. And let me show you what's been marked as Exhibit

24 B. Why don't you check in the binder there. Do you have  
25 Exhibit B?

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1 A. I do.

2 Q. Okay. And what is Exhibit B, Mr. Ultz?

3 A. Exhibit B looks at the monthly budget to actual for  
4 Lexington both on a consolidated basis and by division for each  
5 of the months since they basically came out with their five-  
6 year plan after filing.

7 Q. Okay. And this is for 2008?

8 A. Correct.

9 Q. And the information that is contained on Exhibit B is  
10 that -- comes from information and documents that have been  
11 supplied to you by the debtors?

12 A. Yes, these come directly from their financial statements.

13 THE COURT: You put them in a spreadsheet, is that --

14 THE WITNESS: Right. We just put them into Excel to  
15 make it easier to look at so you don't have to pull out each  
16 monthly report.

17 MR. BRACHT: Okay. Your Honor, we would offer  
18 Exhibit B at this time.

19 THE COURT: Hearing no objection, Exhibit B is in  
20 evidence.

21 MR. STROCHAK: No objection.

22 (Committee Exhibit B is admitted.)

23 BY MR. BRACHT:

24 Q. Mr. Ultz, I'm not going to go over each line item with you  
25 with respect to this exhibit, but what is -- what -- in

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1 general, what is this exhibit demonstrate?

2 A. I really shows that the company as a whole and really by  
3 each division has declined in every month since June relative  
4 to their budget, so each month the results have gotten  
5 progressively worse and the variances increased. As you can  
6 see in the first box on a consolidated basis the variance in  
7 June, which actually was a month that had been completed so  
8 that really was an actual -- was very close and then each  
9 subsequent month has effectively gotten worse.

10 Q. Okay. And when you say on a consolidated basis just for  
11 the record and make sure that everybody is on the same page is  
12 this the line that you're talking about up here, the bottom  
13 line in the first -- the top box?

14 A. That's correct. That would be the entire rubber group as  
15 well as metals and corporate.

16 Q. Okay. Now, the other projections that you have here are  
17 broken down into various the rubber group as a whole, then  
18 connector seals separately, insulators separately, medical  
19 separately and so on.

20 A. Um-hum.

21 Q. I notice that there's no information that is contained in  
22 here for December with respect to the individual units. Why is  
23 that?

24 A. We requested the December financials several times and  
25 haven't received those. All we have is the monthly operating

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1 report which only presents consolidated results, so we don't  
2 have any information by division for December at this point  
3 level in January.

4 Q. Okay. And to -- specifically just we've heard a lot of  
5 talk about, you know, the after market and medical -- the  
6 insulator box does that include the after-market component of  
7 Lexington's business?

8 A. That would be all of their after-market business, as well  
9 as a small portion of their OEM business.

10 Q. Okay. Do you have any feel just generally for the mix  
11 between after market and OEM that's contained within the  
12 numbers for the insulators division?

13 A. My recollection is that the OEM business is about eight  
14 million a year in sales versus 32 million total for the  
15 division, so about a quarter of sales I think less of EBITDA.

16 Q. Okay. So about a quarter of the sales would be the OEM  
17 portion and the rest would be after market?

18 A. That's correct. And even within the OEM portion Lexington  
19 believes that a portion of that is really after market, so I  
20 guess it's even more after market than the initial answer that  
21 I gave, but that's the breakdown the way they actually present  
22 it in their financial statements.

23 Q. And based on your calculations and the information  
24 supplied to you by the debtors are the results actual forecast  
25 of the insulators business also going down?

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1 A. Yeah, the trend appears to be downward. Like I said, we  
2 don't have December yet, but the last three months have been  
3 pretty substantial misses.

4 Q. Okay. And really the same questions with respect to the  
5 medical division which at the top of the second page of the  
6 exhibit.

7 A. The medical division is the same trend. I will note -- I  
8 think it's been discussed that there was a fire in November and  
9 the adjustment to that fire is in this number so this is an  
10 adjusted result, not the straight number that would appear on  
11 their financial statements.

12 THE COURT: Where is the adjustment?

13 THE WITNESS: It's in the actual EBITDA, the 329.  
14 That includes the \$150,000.00 adjustment that they had in their  
15 financials.

16 THE COURT: I heard some testimony before one of the  
17 exhibits Mr. Stochak put in evidence showed \$190,000.00  
18 adjustment versus 150.

19 THE WITNESS: Right. We haven't seen 190. The  
20 director's packet we received said 150.

21 THE COURT: Go ahead, Mr. Bracht.

22 MR. BRACHT: Okay.

23 BY MR. BRACHT:

24 Q. So what is your take-away from Exhibit B? What -- that --  
25 go ahead.

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1 A. I think at the end of the day everyone is on the same  
2 page, that the OEM business is struggling for everyone so  
3 connector seals and metals have been major drains on the  
4 business over the last six months. But insulators and medical  
5 aren't moving in the right direction at the end of the day.  
6 They're both missing their budget by a wider margin each month.

7 Q. Let's move to Exhibit A. Do you have Exhibit A in front  
8 of you, Mr. Ultz?

9 A. I do.

10 Q. And what is Exhibit A?

11 A. Exhibit A is trying to show the changes in projections  
12 over the last six months. So in July the company came out with  
13 their original five-year plan and shortly thereafter received  
14 the divisional backup. So the July 21st line is really the  
15 first round of projections we were given from Lexington.

16 THE COURT: July 22.

17 THE WITNESS: Yes. The 22nd at the top and 23rd at  
18 the bottom. But those are essentially -- the original five-  
19 year plan I think the base level was dated July 15th and that  
20 was the detail we received by division. And since then we've  
21 received a couple different rounds of revisions and as you can  
22 see at the top there's a lot of numbers on the page but the  
23 first section is the insulator's business in aggregate. Within  
24 insulators the company breaks out its work by after market and  
25 OEM and this was the comment I made before where total sales

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1 were around 32 million and the OEM business is around eight  
2 million. So we get more detail based on the OEM side of the  
3 business because that salesman prepares a more detailed  
4 forecast, so we've gotten a couple of rounds of information and  
5 revisions for that.

6 We haven't received any revisions on the original  
7 after-market business although the numbers don't add up. If  
8 you take the revisions, there obviously has been some changes  
9 there and I guess the trend is that each time the company  
10 projects, the projections are revised downward, so you can see  
11 that in aggregate on the insulator's business. It's not just a  
12 2008 or 2009 phenomenon. It really goes throughout the entire  
13 projection period.

14 THE COURT: The 2008 was -- EBITDA was projected to  
15 go up for like October from July, right? 8/4 up to 8/5  
16 through --

17 THE WITNESS: That's correct. And then when the  
18 actuals got closer it was revised down to 7/7 in December. So  
19 what this shows, and there's actually more detail in the OEM  
20 segment on the next page because we've got more detail there  
21 but it really just looks at the change and if you see the  
22 change from October to December, which is the boxed item at the  
23 top of the insulators division, it shows that over the course  
24 of that two-month period the company's long-term prospects  
25 declined by six to ten percent, so it wasn't just a revision in

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1 '08 or even '09 but across the board throughout the next five  
2 years the expectation was that business was going to be worse  
3 and based on what they knew in December versus what they knew  
4 in October.

5 BY MR. BRACHT:

6 Q. And there's a second page that contains the same type of  
7 information with respect to other portions of the business,  
8 correct?

9 A. Right. And this is really a subset of the OEM business on  
10 that first page. As I mentioned, the OEM business is run by  
11 one salesman but within the OEM business the company feels that  
12 a portion of that business actually goes to OEMs for new cars  
13 and another portion goes to what's called OES or original  
14 equipment service parts. So they're still selling to OEMs or  
15 tier-one suppliers, but maybe it goes to a dealership and they  
16 put it on as a repair part versus as on a new vehicle. The  
17 customer is the same, so the salesperson that tracks it is the  
18 same but the end result is that it ends up on a used car versus  
19 a new car. So what this shows really is of that eight and a  
20 half million, approximately three and a half million in 2008 is  
21 more OES business which is closer to the after market than to  
22 the OEM market. And you can see that the after-market business  
23 is projected to be basically flat so there's no real growth  
24 prospects in that business as it's a fairly consistent  
25 business. It kind of tracks with GDP. It doesn't have a lot



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1 of growth typically and so all the growth in the insulators, as  
2 you can see on the last line of the first box, is projected new  
3 business in the OEM market. So you can see the OEM total is  
4 going from five million in 2008 to 18 million in 2012. So all  
5 the -- effectively all the growth in the insulator's business  
6 comes from OEM projections and not after market. So over time  
7 this business really becomes more of an OEM business than an  
8 after-market business.

9 Q. And do you also have the same kind of information down at  
10 the bottom of the first page for medical --

11 A. Right.

12 Q. -- and what is -- what are the projections and received --  
13 projections and revisions of the projections, what do they show  
14 with respect to medical?

15 A. As you can see with medical there's not much of a change  
16 over time. I guess a lot changed in the middle as far as we  
17 have line-by-line projections in the medical division and those  
18 change which customers are going to have which parts, which  
19 customers they lost parts with or volumes had been reduced or  
20 new customers they got provided were increased. At the end of  
21 the day, the dollar amount never changed in aggregate, so over  
22 the course between July and December customers were pulled out.  
23 New customers were put in into their detailed plan but  
24 effectively the EBITDA number never changed.

25 Q. Now, as an overall conclusion you talked about the growth

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1 prospects with respect to the after-market business at least as  
2 reflected in these projections. Does this demonstrate that at  
3 least insofar as the debtors are concerned with making the  
4 projections that the after-market business is also being  
5 negatively impacted by the economy.

6 MR. STROCHAK: Objection, Your Honor. Leading.

7 THE COURT: Sustained.

8 BY MR. BRACHT:

9 Q. What does it show, Mr. Ultz, concerning whether or not the  
10 after-market business is being negatively impacted by the  
11 economy?

12 A. If we could go back to the second page of this exhibit,  
13 there was a revision in the projections on the OEM side between  
14 September and December and the box at the bottom shows the  
15 percentage change. And so what you can see is that the after-  
16 market business between September and December the projections  
17 2008 actually have an increase. They're up 10 percent. But  
18 beyond 2008 the projection was that the after-market business  
19 was going to be worse off than they had originally expected.  
20 So if you compare the September 8th OES after-market sales of  
21 3/5 up to 3/6 are essentially flat. And then you go to the  
22 December projection they actually now project their after-  
23 market sales to decline through 2012. Again, it's not a one-  
24 year issue. This is over the next five years. They now expect  
25 less business in the after-market side than they had

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1 previously. The percentage there, there's about an 18 percent  
2 decline over the course of those -- what is it -- four months,  
3 three months between those projections. The long-term prospect  
4 for the business are now about 18 percent lower. And I guess  
5 the other "no" is that when they do their projections  
6 everything is classified as booked business or in-production  
7 business, highly-likely business, and medium-likely business.  
8 And all the after market was classified as in production or  
9 booked business. There was no speculative business in there.  
10 And yet, the projections declined by 18 percent.

11 Q. So what we have seen in Exhibit B is that the --

12 THE COURT: Z now? We're looking at --

13 MR. BRACHT: I'm going back to --

14 THE COURT: You're going to B.

15 MR. BRACHT: I'm sorry.

16 BY MR. BRACHT:

17 Q. What we first saw with Exhibit B is that debtor's actual  
18 results are continuing to decline.

19 MR. STROCHAK: Objection, Your Honor. Leading.

20 MR. BRACHT: And --

21 THE COURT: Overruled.

22 BY MR. BRACHT:

23 Q. And with respect to Exhibit A what does that show with  
24 respect to the Lexington's projections?

25 A. Well, we have raised -- these show that they're continuing

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1 to miss their budget by a wider margin and Exhibit A shows that  
2 they're continuing to lower their budgets and that is going  
3 over the next five years and not just the current period.

4 Q. Now, if you would please, sir, turn to Exhibit K. Now,  
5 what is Exhibit K?

6 A. Exhibit K is data pulled from Capital IQ, which is a  
7 pretty recognized information service, and it looks at the  
8 change in multiples, the comparable companies chosen by WI  
9 Campbell at each stage of this process. Going back to the 2007  
10 time period when Campbell was trying to sell the company  
11 through the filing date annexed to the first disclosure  
12 statement and then September was when WI Campbell issued their  
13 report. And then December was the final disclosure statement  
14 that's been issued and then the 18th was the last day prior to  
15 submitting these documents. And so what it shows is now  
16 although we don't agree with all of the comparable companies  
17 that Campbell chose even if you assume they're correct the  
18 multiples have declined tremendously over the last year and  
19 even specifically since they issued their report and the  
20 disclosure statement came out in August and September. So on  
21 the automotive side whether it be after market or OEM, the  
22 multiples are down 30 percent and on the medical side multiples  
23 are down about 20 percent.

24 Q. Okay. And with performance -- actual performance compared  
25 to budget going down with the debtors' own projections over

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1 time going down with multiples in the industry going down what  
2 would you expect the change, if any, would be with respect to  
3 the debtors' views of value or enterprise value of this  
4 company?

5 A. It seems like with all three of those factors pointing  
6 downward you would have to assume the value would decline in  
7 their mind over that period of time.

8 Q. Okay. Turn to Exhibit D if you could, please. Do you  
9 have it?

10 A. I do.

11 Q. What is Exhibit D?

12 A. Exhibit D is a chart trying to show a comparative levels  
13 of value across each of the times we've received an indication  
14 from the company. Every time they've issued a disclosure  
15 statement or a report, they classify things differently so it's  
16 hard to look at them side by side. So what we've done here is  
17 just shown the value that they allocate to the rubber group,  
18 the metals group, the nonoperating assets and the cases where  
19 it was relevant the cash and the working capital that Campbell  
20 valued the company at.

21 Q. All right. So we've got the earliest date -- the  
22 [unintelligible] in 2007 was something that was done --

23 A. That was done --

24 Q. -- pre-bankruptcy.

25 A. That was pre-bankruptcy when Campbell was trying to

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1 actually sell the company. This is what they told the company  
2 to expect from a value.

3 Q. Okay. And then we move to the August -- the earliest  
4 date. That's the first disclosure statement, right?

5 A. That's correct.

6 Q. And this enterprise value is something that's contained in  
7 the disclosure statement?

8 A. That's what the disclosure statement lays out.

9 Q. It's not anything that we -- that you agree with or that  
10 SRR agrees with, correct?

11 A. We don't agree. We're just taking it directly from their  
12 documents.

13 Q. Fine. And then the next document or the next number is  
14 September of 2008 and that's the effective date of the draft  
15 WIC valuation report?

16 A. Right. That's their official report.

17 Q. All right. And then the disclosure statement in December  
18 that was the second disclosure statement that was filed  
19 sometime in the middle of December just prior to the  
20 anticipated confirmation hearing that we were hopefully going  
21 to have in February?

22 A. That's correct.

23 Q. Now, obviously we can see the numbers. There has been a  
24 drop in enterprise value from August to December, but it is --  
25 it's dropped and it's comparable to the drop that's occurred

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1 with respect to the other parameters that we've looked at.

2 THE COURT: I don't understand your question.

3 BY MR. BRACHT:

4 Q. Is it a drop that would be comparable to the drop that  
5 we've seen in their actual versus budgeted performance in their  
6 own downward revisions of their projections and the downward  
7 trend of the multiples in the industries?

8 MR. STROCHAK: Objection, Your Honor. I think this  
9 calls for expert testimony. We haven't received a report. I  
10 think once you start getting into comparing multiples and  
11 EBITDA and everything else that's valuation and the Committee  
12 has not provided a valuation report for us.

13 MR. BRACHT: I'll withdraw the question, Your Honor.

14 BY MR. BRACHT:

15 Q. Finally, just move to Exhibit H and I know that we had  
16 talked a lot about this in various ways. Could you just tell  
17 us what Exhibit H is?

18 A. Exhibit H for 1999 through 2007 is the actual sales in  
19 EBITDA pulled from the company's 10K. For 2008 that's the  
20 number inn the most recent set of financials we've received. I  
21 guess at this point it's a projection from the company since we  
22 don't have December results but that's the most recent number  
23 that we had seen that would show up in their 10K.

24 Q. Okay. And the number of 3.7 on the EBITDA line for the  
25 2008 estimated tax number that doesn't include adjustment?

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1 A. It doesn't include adjustment for reorganization expenses  
2 which obviously we're including in everything else, but that's  
3 the number that would show up in their 10K if it were filed  
4 because that's the actual unadjusted number.

5 MR. BRACHT: Your Honor, I would offer Exhibit H, D,  
6 K and E at this -- excuse me, K and A.

7 MR. STROCHAK: Let me start, Your Honor. No  
8 objection to H.

9 THE COURT: All right. Exhibit H is in evidence.

10 (Committee Exhibit H is admitted.)

11 MR. STROCHAK: I'm sorry. Did you say E, Mr. Bracht?

12 MR. BRACHT: No, I didn't. I didn't say E. I did  
13 say E. I misspoke. I meant A and D.

14 MR. STROCHAK: No objection to A.

15 THE COURT: All right. Exhibit A is in evidence.

16 (Committee Exhibit A is admitted.)

17 MR. STROCHAK: B is the next one?

18 THE COURT: No, D.

19 MR. STROCHAK: D as in David.

20 THE COURT: B is in evidence already. D as in David.

21 MR. STROCHAK: No objection to D as in David.

22 THE COURT: All right. Exhibit D is in evidence.

23 (Committee Exhibit D is admitted.)

24 THE COURT: K is next.

25 MR. STROCHAK: K, I believe, is properly the subject



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1 of expert testimony and, again, for the same reason, we haven't  
2 received a report. We object to that one.

3 THE COURT: You want to be heard on this, Mr. Bracht?

4 MR. BRACHT: Well, Your Honor, it's simply a -- it's  
5 right out of the -- what did you call it?

6 THE WITNESS: Capital IQ.

7 MR. BRACHT: This is the same source that's been used  
8 by everybody in the courtroom. It's simply a recitation taken  
9 from the page of what's contained in that source. It's not a  
10 matter of opinion. It's a matter of fact.

11 THE COURT: Lay a better foundation for it.

12 BY MR. BRACHT:

13 Q. Mr. Ultz, where did you get the information that's  
14 contained on Exhibit K?

15 A. Exhibit K comes from the data source Capital IQ. We  
16 strictly ask for the trailing 12-month EBITDA of each of the  
17 comparable companies. This is an Excel spreadsheet.

18 THE COURT: The companies that are listed here and  
19 the ones that WY Campbell --

20 THE WITNESS: It's ones that they chose, not our --  
21 they're not the counsel we would choose.

22 THE COURT: All right. So all this data comes  
23 from --

24 THE WITNESS: Capital --

25 THE COURT: Campbell IQ?

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1 THE WITNESS: Capital IQ.

2 THE COURT: Capital IQ?

3 THE WITNESS: Yes.

4 THE COURT: Objection is overruled. Exhibit K is in  
5 evidence.

6 (Committee Exhibit K is admitted.)

7 MR. BRACHT: Okay. And I believe, Your Honor, that  
8 we already got Exhibit B in and I think I offered it earlier.

9 THE COURT: I show it as in evidence.

10 MR. BRACHT: Okay.

11 BY MR. BRACHT:

12 Q. Mr. Ultz, just a few more questions. During the course of  
13 this bankruptcy as SRR participated in discussions with the  
14 debtors regarding enterprise value?

15 A. Yes.

16 Q. Has SRR shared its views of enterprise value with the  
17 debtors and its advisors?

18 A. We did, yes.

19 Q. And was that done at both orally and in writing?

20 A. Yes.

21 Q. And during the course of those meetings and those  
22 discussions was SRR able to explain its methodology that it has  
23 used in terms of its use regarding value?

24 A. Yes. We discussed the comparable companies that we chose  
25 and the multiples and the levels of EBITDA we were applying it

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1 to and have the chance to answer questions on those.

2 MR. BRACHT: I'll pass the witness, Your Honor.

3 THE COURT: Did you prepare -- have you prepared a  
4 valuation report, Mr. Ultz?

5 THE WITNESS: We haven't finalized one. We are  
6 prepared --

7 THE COURT: Prepared a draft?

8 THE WITNESS: We prepared it at the beginning of  
9 January. I believe we were supposed to exchange reports on  
10 January 16th so we were in the first of January ready to  
11 finalize and then obviously it was delayed and there is the  
12 whole reorganizing of the connector seals business which  
13 changes things pretty dramatically.

14 So as of December 31st we had prepared one. It  
15 hadn't been finalized. It hadn't gone through all the quality  
16 control and the review but there was the first draft of our  
17 report.

18 THE COURT: There was testimony during the debtors'  
19 direct case that the debtor has asked for a meeting with the  
20 Committee and its advisors to discuss value. Are you aware of  
21 that?

22 THE WITNESS: They told me that they had requested  
23 that. I haven't been requested to be in a meeting.

24 THE COURT: Go ahead, Mr. Bracht.

25 MR. BRACHT: That's all I have, Your Honor. Pass the

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1 witness.

2 THE COURT: Cross-examination.

3 CROSS-EXAMINATION

4 BY MR. STROCHAK:

5 Q. Good morning, Mr. Ultz. Adam Strochak, Weil Gotshal for  
6 the debtors. Let's start with your Exhibit B, Committee  
7 Exhibit B, please. Now, your -- let me point you to the first  
8 page of Exhibit B, the insulators business, the box at the  
9 bottom of the page.

10 A. Yes.

11 Q. You've got cumulative forecast sales and actual sales of  
12 the insulators business at 16.9 for forecast and 16.2 for  
13 cumulative. Is that correct?

14 A. Correct.

15 Q. And are those final numbers or are those only through  
16 November?

17 A. Those are through November. We don't have December  
18 results.

19 Q. So through November we had just a -- just under five  
20 percent off against the forecast on sales, right?

21 A. Correct.

22 Q. And you've got the forecast EBITDA and actual, again, just  
23 dropping a little further down on the page, Exhibit B, and  
24 again that shows just a little bit more than three percent, 3.4  
25 percent off of forecast, correct?

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1 A. Correct.

2 Q. Now, let me direct you, if I could, to Exhibit 13 in the  
3 debtors' volume. It's a separate binder. You should have it  
4 there. It may be to your left.

5 A. Thirteen is the comparison of '08 actual versus July  
6 forecast?

7 Q. Right.

8 A. Okay.

9 Q. Now, for the insulators business you see the column for  
10 2008 actual and you were in court yesterday when Mr. Welhouse  
11 testified about this, correct?

12 A. Yes.

13 Q. Now, you were -- you didn't call up overnight and ask for  
14 the missing information for December that you didn't have yet,  
15 did you?

16 A. No, we requested it two or three times over the last week  
17 or two and asked to have it provided to us as soon as it was  
18 available.

19 Q. And when you still didn't have it, you still didn't call  
20 up yesterday or say anything in court yesterday, did you, sir?

21 A. No. That's a standing request.

22 Q. You do have data for January through June, right?

23 A. We have annual results. I don't think they gave us  
24 monthly for January through June. We could back into it  
25 obviously from the actuals we have.

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1 Q. Well, again, you saw it yesterday in court that the  
2 debtors did present the data for all of 2008, correct?

3 A. Correct.

4 Q. And let's just look at -- let's focus on insulators on the  
5 EBITDA number.

6 A. Um-hum.

7 Q. The final EBITDA number is 7.9 for 2008 preliminary  
8 results against forecast of 8.4, correct?

9 A. Correct.

10 Q. And again, that's only 5.4 percent off of the forecast,  
11 right?

12 A. With six months of actual, yes.

13 Q. Have you done any assessment of whether the first year --  
14 first part of the year was strong in performance?

15 A. Strong relative to what?

16 Q. Well, let me ask it this way. Have you done any analysis  
17 of first half of the year performance at all in the insulators  
18 business?

19 A. We've looked at the year in aggregate. I guess what we've  
20 been looking at now is relative to budget because we weren't  
21 provided a budget for the full year. Apparently, Cap Source  
22 had one from early but we were told there was no budget for the  
23 full year '08 because of the process they were going through at  
24 that point. So the only budget that we have came out in July.  
25 We obviously had older budgets. We have, I think, '04 through

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1 '07 annual budgets but we never got a budget for the first six  
2 months, so I guess strong relative to what is what I would ask  
3 given that we don't know what they were expecting.

4 Q. Turn with me, if you would, to Exhibit A.

5 A. In the Committee's?

6 Q. Yes.

7 A. Okay.

8 Q. Now, the OES sector you've indicated that that is  
9 essentially parts that are sold into the original equipment  
10 market, but on the service side of the business as opposed to  
11 the new car build, right?

12 A. Right. My understanding is it's sold to the same  
13 customers as the OEM business, but they have it for a different  
14 purpose where it would go on a repair part versus a new  
15 vehicle.

16 Q. So, for example, these might be parts that would be  
17 supplied to a Ford or a Chrysler or a General Motors dealer who  
18 might then replace spark plugs wires in vehicles that are  
19 brought in for service, correct?

20 A. Correct.

21 Q. And you would agree that the -- you would agree with me,  
22 sir, that the OES segment is only a small segment of the  
23 debtors' insulators business, correct?

24 A. Correct.

25 Q. Now, you've indicated that OES -- the projection for OES

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1 sales is going down, right?

2 A. Right.

3 Q. But, in fact, the projections for after-market sales --  
4 true after-market sales out of the OES sector are not going  
5 down, correct?

6 A. My recollection is over the next five years the  
7 projections were in the zero to three percent growth range for  
8 pure after market to like Auto Zones and retailers and those  
9 type of stuff -- those types of companies.

10 Q. Now, there's no analysis here -- withdrawn.

11 [Pause in the proceedings.]

12 MR. STROCHAK: That is all the questions I have.

13 Thank you, Your Honor.

14 THE COURT: Thank you, Mr. Strochak.

15 Any further examination from anyone?

16 MR. TISHLER: No, Your Honor.

17 THE COURT: Thank you, Mr. Tishler.

18 Mr. Bracht?

19 MR. BRACHT: Nothing further, Your Honor.

20 THE COURT: All right. You can be excused.

21 THE WITNESS: Thank you.

22 THE COURT: Mr. Bracht, your next witness?

23 MR. BRACHT: The Committee calls Nick Walsh.

24 THE COURT: If you would raise your right hand,  
25 Mr. Walsh.



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1 (Nick Walsh, witness for the Committee, sworn.)

2 THE COURT: Please have a seat.

3 MR. BRACHT: Speak into the mike, Mr. Walsh.

4 DIRECT EXAMINATION

5 BY MR. BRACHT:

6 Q. Would you state your name, please, for the record?

7 A. Nicholas Walsh.

8 Q. Mr. Walsh, how are you employed?

9 A. I am employed with Wilford Aubrey [Ph.]. We're an  
10 investment management company.

11 Q. Okay. And is your employer a member of the Creditors'  
12 Committee in this case?

13 A. It is.

14 Q. And are you the representative of Wilford Aubrey which  
15 respect to the Committee?

16 A. I am.

17 Q. And have you been on the Committee the entire time?

18 A. I have.

19 Q. Have you had occasion to meet with and deal with the  
20 debtors and its advisors over a period of time?

21 A. I have with the debtors.

22 Q. Okay.

23 A. Several times.

24 Q. All right. And what is -- how does Wilford Aubrey rank in  
25 terms of the outstanding notes with respect to the sub debt?

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1 Are you the second --

2 A. Based on --

3 Q. -- biggest holder?

4 A. Based on my understanding we're the third largest.

5 Q. Third largest. Okay. Post-bankruptcy, Mr. Walsh, has the  
6 Committee met with the debtors in attempts to negotiate a  
7 consensual plan?

8 A. It has several times.

9 Q. Both in person and over the phone?

10 A. Yes.

11 Q. Do you have an estimate as to how many times?

12 A. I would say at least a half a dozen times if you count the  
13 times that the full committee met with the debtor and subsets  
14 of the Committee met also with the debtor.

15 Q. Okay. What in those meetings has been the single biggest  
16 sticking point with respect to differences between the  
17 Committee and the debtors?

18 A. Well, I would say in my opinion that the biggest sticking  
19 point has been basically that any negotiation with management  
20 the sine qua non, the prerequisite, if you will, for any  
21 reorganization value around which we would be organized had to  
22 include a material recovery for the old equity.

23 Q. And by "old equity" you're referring to the current  
24 management?

25 A. I believe they and their affiliates own approximately two-

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1 thirds of the old equity.

2 Q. Okay. What is it about the debtors' views with respect to  
3 value as expressed to you and the Committee that is frustrating  
4 to you?

5 A. Well, I would say that reasonable people can disagree on  
6 appropriate comparables, appropriate multiples, but basically  
7 when faced with what's been going on the macro climate to have  
8 virtually no movement on the value of the company over that  
9 time to have exit financing deteriorate, to have basically the  
10 need for new money to come in further diluting the senior notes  
11 and still to have basically no movement on the value of the  
12 company in management's mind I think has been wholly  
13 unrealistic.

14 Q. As a result of that kind of unyielding position on the  
15 part of management are you at an impasse? Is the Committee at  
16 an impasse with management at this point?

17 A. I would say so. Yes.

18 Q. You mentioned exit financing. Have you had the Committee  
19 and you individually have discussions with the debtors  
20 concerning the availability of exit financing and how they've  
21 been doing with respect to exit financing.

22 A. I would say the most recent discussion was, I believe,  
23 immediately prior to the last civi [ph.] hearing where we had a  
24 meeting and management made it appear that exit financing was  
25 imminent and they were minor appraisal-type issues to get over.

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1 As my memory serves correctly, it was related to the inventory  
2 appraisals that Capital One was doing, but this was just a  
3 detail to be worked out and that exit financing was imminent.

4 Q. And did that subsequently turn out to be the case?

5 A. No.

6 Q. What attempts, if any, has the Committee made to obtain  
7 exit financing in connection with this bankruptcy?

8 A. We haven't gone out explicitly looking for new lenders.  
9 We feel that in the current environment investors are looking  
10 to become involved in a situation where there's really relative  
11 little assurance that a deal would get done. By that, I mean,  
12 exclusivity is still with management, so we don't really have  
13 the wherewithal to do due diligence. So we just determined  
14 basically as a committee that the pursuit of such exit  
15 financing would not be a good use of time.

16 Q. And because of the exclusivity situation?

17 A. Yes.

18 Q. What, in your mind, prospects are available to the  
19 Committee if exclusivity is terminated?

20 A. If it were to be terminated I'm hopeful that in relatively  
21 short order the Committee could propose a plan of  
22 reorganization which at its core would involve 100 percent  
23 conversion of the unsecured claims into equity. Could possibly  
24 involve some other noteholders investing on a secured basis  
25 could involve some of the sales of the noncore assets and could

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1 come to some agreement with Capital Source to couch their  
2 stated aim, which is to reduce their exposure to the company.

3 Q. I'm sorry. I didn't hear that last --

4 A. Which is to reduce their exposure to the company.

5 Q. All right. Did -- and from the Committee's perspective as  
6 we speak, what -- from -- is the Committee's views concerning  
7 the best course of action at this time?

8 A. Well, it's my belief that the Committee would support such  
9 a plan. We haven't really gone over it fully and fleshed out  
10 the details but in concept we think that they would support  
11 that.

12 Q. And that claim would be -- include the sale of noncore  
13 assets, correct?

14 A. I believe that the Committee would support marketing the  
15 noncore assets subject to a reserve level to be agreed upon.

16 THE COURT: What do you consider the "noncore  
17 assets"?

18 THE WITNESS: Basically, everything but medical and  
19 insulator/connectors.

20 BY MR. BRACHT:

21 Q. From your perspective, your experience, Mr. Walsh, does  
22 the sale of the medical business at this point in time make any  
23 sense to you?

24 A. Well, I think it's a very distressed environment right now  
25 and I think some stability in the markets would be beneficial

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1 to a sale process. I think market participants would see right  
2 through a market test in that information gleaned would be of  
3 relatively little value because the true buyers would not want  
4 to have basically help someone do price discovery through no  
5 benefit of their own so -- and in terms of an actual sale  
6 process I think that doing it immediately or relatively soon  
7 would not be in the best interests of all creditors.

8 MR. BRACHT: Thank you, Mr. Walsh.

9 THE COURT: I'll pass the witness, Your Honor.

10 THE COURT: Thank you, Mr. Bracht. Cross-  
11 examination?

12 CROSS-EXAMINATION

13 BY MR. STROCHAK:

14 Q. Good morning, Mr. Walsh.

15 A. Good morning.

16 Q. Adam Strochak, Weil Gotshal for the debtors. The  
17 Committee has not made any proposal to the debtors that meets  
18 the debtors' requests or the debtors' position that there  
19 should be a substantial recovery for equity in this case,  
20 correct?

21 A. Well, we have exchanged -- what would be the right term --  
22 term sheets, proposal letters which involved an optionality  
23 scenario where there would be some warrant recovery for  
24 existing equity holders should value ultimately recover to the  
25 point where equity would be -- to the point where those

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1 warrants would become valuable.

2 Q. And isn't it true, sir, that that proposal did not provide  
3 a substantial recovery for equity, correct?

4 MR. BRACHT: Your Honor, I have some -- an objection.  
5 I think that these discussions were done explicitly pursuant to  
6 Rule 408. Part of the settlement discussions [unintelligible]  
7 debtors and Committee and, therefore, I would object.

8 THE COURT: Response, Mr. Strochak?

9 MR. STROCHAK: Your Honor, I don't think it's fair  
10 for Mr. Walsh to be able to testify that the debtors have come  
11 in and taken unreasonable positions without unpacking to some  
12 degree what the parties' positions were.

13 Now, I don't think any of this evidence should be  
14 considered in the context of Rule 408 issues, but if we're  
15 talking about in the negotiation process and if the Committee  
16 has taken the position that we've somehow been unreasonable in  
17 negotiations, I don't know how to respond to that, other than  
18 ask him about the substance of the proposals and --

19 THE COURT: The objection is overruled. You opened  
20 the door, Mr. Bracht.

21 BY MR. STROCHAK:

22 Q. Now, Mr. Walsh, the proposal that you made to the debtors  
23 had the substantial option value going to the bond holders,  
24 correct?

25 A. I -- it had -- the bulk of the equity going to the

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1 bondholders. It had the bulk of the optional recovery going to  
2 the junior subordinated notes, the preferred stock, and the  
3 equity.

4 Q. And it's the equity, sir, that would receive most of the  
5 upside value in the event the debtor performed well post-  
6 petition, correct?

7 A. Well, it's quite possible that the debtors -- well, let me  
8 rephrase that. The equity -- existing equity would receive --  
9 I'm sorry. The new equity for which the bonds would be  
10 exchanged it was our intention to have them receive up side --  
11 to receive recovery until the full amount of their claim had  
12 been recovered and it was our intention to have old equity  
13 participate after that point essentially.

14 Q. So are you telling us that your proposal topped out the  
15 noteholders recovery at 100 percent of their claims or did  
16 they -- or isn't it true, sir, that they actually got value --

17 THE COURT: Mr. Storchak, we're not going to get into  
18 the details of negotiating. Mr. Bracht opened the door a  
19 little, but I'm not going to -- I don't want to hear about the  
20 back and forth. I wish you would sit down together and do more  
21 negotiating and deal with value and address to the Committee,  
22 provide a copy of your financial advisors report. I'll save  
23 the rest of my comments for later.

24 Go ahead, Mr. Storchak, but let's stay off of the  
25 negotiating positions.



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1 MR. STROCHAK: Thank you, Your Honor.

2 BY MR. STROCHAK:

3 Q. Have the debtors in any way precluded the Committee from  
4 having any prospective exit lender do due diligence?

5 A. No.

6 Q. Now, it's correct that the Committee has no proposal in  
7 hand for exit financing, correct?

8 A. Correct.

9 Q. Now, you've indicated the possibility that some of the  
10 noteholders could come in as secured lenders on an exit  
11 facility. Do you have a proposal from any of the existing  
12 noteholders for such a facility?

13 A. We do not.

14 Q. So no one has committed to such financing, correct?

15 A. Correct.

16 Q. Isn't it correct, sir, that during the course of these  
17 cases the Committee has not once come to the debtors and  
18 suggested a sale of noncore assets?

19 A. Well, on this if it's all right I'll speak for myself.  
20 And the time line may be a little blurry because I've been  
21 involved in talking to the debtors and the 16-odd months of  
22 prepetition negotiations and one of the things that I  
23 personally suggested several times was, hey, if you're having  
24 trouble making these coupon payments why not sell some of these  
25 excess assets to prevent the filing.

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1 Q. So that's prepetition.

2 A. If I -- I may have mentioned it again post-petition. I  
3 don't know. I don't recall exactly the time -- the time that I  
4 actually recommended that.

5 Q. Let me just ask the question again. As you sit here today  
6 are you aware of any particular circumstances where you or any  
7 other member of the Committee after the petition date came to  
8 the debtors and said, we think it's time to sell some of the  
9 noncore assets?

10 MR. BRACHT: Asked and answered, Your Honor.

11 THE COURT: Sustained.

12 BY MR. STROCHAK:

13 Q. Sir, isn't it correct that no lender or prospective  
14 lender, more appropriately, has told you that they would not  
15 consider a proposal for financing unless the exclusivity was  
16 ended in this case?

17 A. That's true.

18 Q. Now, it is correct, sir, that the -- well, never mind.  
19 Withdrawn.

20 MR. STROCHAK: That's all the questions I have, Your  
21 Honor.

22 THE COURT: Thank you, Mr. Strochak.

23 Mr. Tishler?

24 CROSS-EXAMINATION

25 BY MR. TISHLER:

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1 Q. Good morning, Mr. Walsh. John Tishler for the senior  
2 lenders. How much is the claim of the noteholders in the  
3 aggregate in this case?

4 A. The face amount of the notes on my recollection was  
5 approximately 34.2 million. We have --

6 THE COURT: I'm sorry. Just give me the figure  
7 again.

8 THE WITNESS: 34.2 million.

9 THE COURT: Thank you.

10 THE WITNESS: We have an accrued interest claim as  
11 well which, of course, is increasing.

12 MR. TISHLER: Sure.

13 BY MR. TISHLER:

14 Q. And you're aware there's a junior DIP for about four  
15 million?

16 A. Correct.

17 Q. And then the senior lenders claim is about 34, 35 million?

18 A. That's my understanding, yes.

19 Q. If Mr. Vomero's valuation is correct, then the equity is  
20 what we call out of the money in this case now, wouldn't you  
21 say?

22 A. Yes.

23 Q. Do you believe having an I banker seek additional sources  
24 of exit financing might turn up additional sources of exit  
25 financing in addition to what the debtors have done at this

Walsh - Cross/Redirect

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1 point?

2 A. I do.

3 MR. STROCHAK: Objection, Your Honor. Beyond on the  
4 scope of the direct.

5 THE COURT: Overruled.

6 BY MR. TISHLER:

7 Q. Have you or the Committee marketed or tested the market on  
8 the medical device business?

9 A. No.

10 Q. If this company had less debt on its balance sheet do you  
11 believe it would have a better chance to exit this bankruptcy?

12 A. I do.

13 Q. Is it better to sell assets at a time -- or is it better  
14 to sell assets when there is a long marketing period or is it  
15 better to sell assets in a rushed fire sale-type procedure?

16 MR. STROCHAK: Objection, Your Honor.

17 THE COURT: Sustained.

18 MR. TISHLER: Thank you. Thank you.

19 THE COURT: Mr. Bracht?

20 MR. BRACHT: Just one follow-up, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. BRACHT:

23 Q. Mr. Walsh, in the answers to the questions from  
24 Mr. Strochak concerning exit financing, that's what I'm focused  
25 on, has the existence of exclusivity hand strong [ph.]

Walsh - Redirect

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1 discouraged the members of the Committee to take steps to  
2 obtain exit financing?

3 A. Yes, it has.

4 MR. BRACHT: That's all I have.

5 THE COURT: Thank you, Mr. Bracht.

6 MR. STROCHAK: Nothing further, Your Honor.

7 THE COURT: All right. You're excused. Thank you,  
8 Mr. Walsh. Any further witnesses, Mr. Bracht?

9 MR. BRACHT: No. We rest, Your Honor.

10 THE COURT: All right. Mr. Tishler, you rested as  
11 well?

12 MR. TISHLER: Yes, Your Honor.

13 THE COURT: All right. Mr. Strochak, any rebuttal?

14 MR. STROCHAK: Your Honor, I do want to talk with my  
15 client about brief rebuttal. In terms of timing I don't know  
16 if we could get through closings before your 12:15 time line.

17 THE COURT: I know but I'd like to get through. If  
18 you've got brief rebuttal let's get it on now and I'd like to  
19 have the closings at 3:45, so call your witness if you have a  
20 witness.

21 MR. STROCHAK: Thank you, Your Honor. Could I just  
22 have two minutes, Your Honor?

23 THE COURT: Yes.

24 [Pause in the proceedings.]

25 MR. STROCHAK: Thank you, Judge. We're not going to

1 call any rebuttal case.

2 THE COURT: All right. You rest?

3 MR. STROCHAK: We rest.

4 THE COURT: All right. All sides have rested. It's  
5 11:45. We're going to be in recess. We'll have argument at  
6 3:45 p.m. Thank you very much.

7 (Off the record.)

8 THE COURT: -- what my ruling is going to be but --  
9 and I'm not sure the issues that bothered me at the start are  
10 any different now than they were then and I tried to tell you  
11 initially. While the prepetition lenders have opposed use of  
12 cash collateral, it's an overstatement to say they oppose it.  
13 They obviously -- they don't want to pull the plug. There's  
14 differences of opinion with debtors about for what period of  
15 time cash collateral should be used.

16 The lenders have indicated that additional conditions  
17 should be imposed by at least in terms of financial covenants  
18 they haven't been specific about what financial covenants they  
19 had in mind. During some of the witness examination the  
20 question was asked through a witness, "Well, would you be  
21 prepared -- of management would you be prepared to condition  
22 continued use of cash collateral on signing contracts in  
23 connection with the consolidation?" Everybody seemed  
24 surprised. The witness said, "Sure."

25 So, I mean, given that no one has argued the case --

1 that the debtor should to be permitted to use cash collateral  
2 the issues are for what period of time and under what  
3 conditions. And I don't know whether you've endeavored,  
4 Mr. Tishler, to talk -- you and your clients to talk with the  
5 debtors to see whether you can come to some understanding or  
6 agreement both as to the period and as to the conditions.

7           Just so you know why I'm not ruling on it, depending  
8 on the outcome -- put it this way. If I extend exclusivity for  
9 some period of time -- and I don't know that I will -- but if I  
10 were to do that, I would be very disinclined to impose any  
11 condition on the debtors if they retain investment bankers,  
12 detest the market on medical business or any other business.  
13 If exclusivity is extended, the debtor should be running its  
14 business and deciding how it wants to proceed. So I -- I'll  
15 have an open mind and listen, but I just wanted to let you know  
16 now that that's certainly not a direction that I'm leaning at  
17 this point. In terms of financial covenants, that's one thing;  
18 the period of continued use of cash collateral is another.  
19 Whether exclusivity is lifted or not and you oppose the  
20 extension of exclusivity as did the Committee and you certainly  
21 in indicating a willingness to allow continued use of cash  
22 collateral it wasn't tied directly to exclusivity.

23           So, you know, it seems to me that all the relevant  
24 constituents should try and talk and figure out whether there  
25 are -- what, if any, covenants or conditions and what the

1 period is. I'd ask you to keep in mind in terms of the period  
2 the 13-week budget, cash forecast which I think is  
3 uncontroverted that it is -- these are not findings of fact,  
4 but I mean, what -- what -- I mean, I think it seemed to be  
5 acknowledged the debtor was conservative preparing its cash  
6 forecast.

7           Mr. Vomero, I thought, was -- everyone was sort of  
8 complimentary. Mr. Welhouse in his efforts in forecasting cash  
9 in these 13-week cash budgets so I'd expressed at the outset my  
10 concern, you know, the budgets show about four million now and  
11 then at the end of the week of May 22nd down to two million and  
12 I still have questions about it. So you ought to keep in mind  
13 in terms of discussions about whether use of cash collateral  
14 should be extended.

15           I certainly doubt that I would ever extend it to the  
16 end of December and even the debtor seemed to, you know, at the  
17 very end of their reply briefs said, well, if you don't do it  
18 till the end of December maybe the end of May, their obvious  
19 fall-back position.

20           You know, I'm not anxious to have additional cash  
21 collateral hearings, but it does seem to me that the testimony  
22 established that there didn't seem to be real disagreement with  
23 the debtor moving forward with consolidation of the connector  
24 seal business. Mr. Vomero agreed that that was a good  
25 strategy. It had to be followed now. So no one has really



1 contested that that should be done. There seemed to be  
2 questions about whether the debtor can do this in three months  
3 or six months and whether it can sign up contracts as it says  
4 it expects to be able to do by the middle of March, so you  
5 ought to -- you know, I would encourage you to talk about  
6 whether -- you know, there shouldn't be some date for continued  
7 use of cash collateral that will give the prepetition lenders a  
8 chance to come back if things aren't going the way the budget  
9 shows and we'll sort of test is the debtor really successfully  
10 executing on its consolidation of the connector seal business.  
11 Those are not rulings. Those are just some obvious thoughts  
12 from what I've heard.

13           With respect to exclusivity, I'll listen to everybody  
14 about it but I'm not real happy with either the debtor or the  
15 Committee. I have real questions whether the debtor -- the  
16 debtors and the Committee have proceeded in good faith in  
17 negotiations. I have to express real skepticism and the debtor  
18 was unsuccessful in getting the Campbell valuation if one would  
19 reach pretty far to call out a valuation report into evidence  
20 but, you know, Mr. Walsh's testimony at the end when I've been  
21 listening to all counsel and witnesses at various points, the  
22 market is fallen apart and yet the value of this company,  
23 according to the debtor, doesn't seem to change. So I'm a real  
24 skeptic, but this isn't the time. They didn't get their expert  
25 report into evidence and if we ever get to a hearing and

1 valuation I assume they'll have a real expert report. If not,  
2 they're going to be in real trouble.

3           Those might -- you might want to shape your arguments  
4 accordingly and I -- you know, and I'll ask both Mr. Bracht and  
5 Mr. Storchak. At this stage I'm not sure what the catastrophe  
6 is if exclusivity is lifted. I mean, you in your brief,  
7 Mr. Storchak, say, oh, the Committee hasn't come forward with  
8 exit financing. They don't have anybody who says that they're  
9 willing to convert a DIP into notes. Mr. Walsh has said, well,  
10 you know, we'll clean up the balance sheet of debt, convert  
11 everything to equity. I understand if there is any equity  
12 value, equity doesn't like it because it dilutes them down  
13 substantially, but in -- those aren't issues for today but, you  
14 know, if the debtor gets any extension of exclusivity it's  
15 going to be really short and I'm -- for one thing, the Court is  
16 absolutely determined about is your brief, Mr. Storchak,  
17 suggested that, oh, extend exclusivity, you know, the Committee  
18 can have three months at the end. You absolutely lose  
19 exclusivity the end of September, I think it is. And you said,  
20 oh, well, the Committee would have -- if you extend use of cash  
21 collateral till the end of December, well, the Committee would  
22 have three months to do something, it isn't going to happen.  
23 It isn't going to happen. So I'm not sure whether -- what the  
24 calamity is if exclusivity were ended right now and I'm not  
25 sure the Committee is going to do any better than the debtors

1 have in coming up with a plan and we're probably going to wind  
2 up with evaluation trial no matter what. But think about that.  
3 I'll see you all at 3:45.

4 MR. STROCHAK: Thank you, Judge.

5 (Off the record.)

6 THE COURT: Please be seated. All right.

7 Mr. Strochak?

8 CLOSING ARGUMENT

9 MR. STROCHAK: Thank you, Your Honor. Adam Stroc hek  
10 for the debtors. Let me start by addressing some of the points  
11 raised in Your Honor's comments before we broke in terms of the  
12 timing of our requests, that is, the length of the extensions  
13 that we're seeking and conditions to those requests.

14 Our original cash collateral motion starting with  
15 that asked for extensions in December 31st, as the Court knows.  
16 In our papers we did indicate to the Court that if the Court  
17 was not comfortable with an extension of that duration that we  
18 thought July 31 was an appropriate date. That will give us  
19 enough time to get through the consolidation of the connector  
20 seals business, to continue to explore the market for exist  
21 financing. Hopefully, once the consolidation is either  
22 substantially done or substantially underway, that will ease  
23 the way to exit financing. We can't be sure of that, of  
24 course, but it's certainly our hope that that will fall into  
25 place. And July 31 seems an appropriate date as long as it's

1 without prejudice to a further extension and likewise without  
2 prejudice to anyone else coming into court and seeking to end  
3 use of cash collateral if circumstances change between now and  
4 then.

5 So we think that's an appropriate date if the Court  
6 is uncomfortable going further given the state of the markets,  
7 the state of the business, the cash projections or anything  
8 else that the Court has heard.

9 With respect to exclusivity we had originally asked  
10 for --

11 THE COURT: Just before you do that --

12 MR. STROCHAK: Sure.

13 THE COURT: -- you said you were going to address  
14 length of extension. You've done that. Also, conditions.

15 MR. STROCHAK: I'm happy to deal with cash collateral  
16 conditions now rather than circling back.

17 THE COURT: Yeah, why don't you do that?

18 MR. STROCHAK: Here's our thinking on conditions,  
19 Your Honor. There is 110 percent accedence rate built into our  
20 order. I do want to call attention; there's a typo in the  
21 order. We wrote "ten percent" instead of "110 percent," so if  
22 you look at the order that we filed with our motion papers it  
23 basically says on a cumulative basis we won't use more than 110  
24 percent of the cash that we said we were going to use in the  
25 budget. So that's in there already.

1 We have --

2 THE COURT: Your prepetition letter said you exceeded  
3 by .6 percent or something.

4 MR. STROCHAK: That was a sales figure. In the  
5 original cash collateral order there was a sales figure and  
6 we're required to report to them and we missed that by that  
7 small amount.

8 With respect to the cash budget going forward, we're  
9 comfortable saying that we won't go more than a million dollars  
10 below our forecast. We've hit that forecast very consistently  
11 with the cash budget, very consistently. Obviously, with  
12 something like cash you could be tripped up by, you know, a  
13 check not coming in from a customer or something like that. We  
14 wouldn't want to inadvertently trip a covenant and not be able  
15 to continue to run this business.

16 THE COURT: Let me just stop you there because  
17 Exhibit 1, which is the cash budget, the testimony that you  
18 proffered, you know, you were about 300,000 -- you actually had  
19 about \$300,000.00 more in cash than was budgeted, I think, at  
20 this February 27th date looking at it. Slightly wrong -- there  
21 was some issue about beginning of the week, end of the week,  
22 but so the actual cash exceeded what was in the budget.

23 MR. STROCHAK: That's right. Quite possible that it  
24 did. I think -- I can't recall the exact number, \$175,000.00,  
25 \$200,000.00.

1 THE COURT: Okay.

2 MR. STROCHAK: Your recollection is 300.

3 THE COURT: Let me -- you know, if you get to May  
4 22nd and you're a million below -- a million in cash this  
5 budget showed it going from approximately four million down to  
6 approximately two million. I'll hear from Mr. Tishler, but I  
7 suspect they're going to be much more uncomfortable with a  
8 million than they are with two million, so saying you won't go  
9 more than a million below what's in the budget you may -- well,  
10 I may hear more about that from Mr. Tishler.

11 MR. STROCHAK: Well --

12 THE COURT: And I have to express my own discomfort  
13 with that. I mean, I expressed my views before the start and  
14 one of my concerns was, okay, I saw a 13-week budget going from  
15 four million to two million. And I never heard a figure on  
16 what cause you need to continue operating what is the minimum  
17 cash balance the debtor requires in order to fund its day-to-  
18 day operations.

19 The values that I heard, the total enterprise value,  
20 all that was on a going-concern basis. This debtor runs out of  
21 cash you may as well throw out going-concern basis unless  
22 somebody is going to start pumping money into it.

23 MR. STROCHAK: Well, what I'm saying, Your Honor, is  
24 that the use of -- continued use of cash would be conditioned  
25 on us being not more than a million dollars below our net

1 available forecast so that would be --

2 THE COURT: And the question I had --

3 MR. STROCHAK: -- of course --

4 THE COURT: -- if you get to -- we'd get to May and  
5 instead of two million you have one million. I'll guess I'll  
6 hear from Mr. Tishler about it, but is that -- I mean, I didn't  
7 hear any evidence about what the minimum cash that's required  
8 to fund ongoing business operations. I just express I get  
9 nervous when that cash balance over 13 weeks goes from four  
10 million to two million. Now I heard Mr. Lubin and Mr. Welhouse  
11 say, well, they expect that, you know, if the consolidation  
12 plan goes as they hoped that the number will increase. If it  
13 doesn't, that's the concern I have so --

14 MR. STROCHAK: Yeah.

15 THE COURT: -- I'll hear from Mr. Tishler about it,  
16 so --

17 MR. STROCHAK: Yeah.

18 THE COURT: -- your proposal is that we have this  
19 cushion of a million below.

20 MR. STROCHAK: Yeah.

21 THE COURT: Even though I've heard how conservative  
22 these projections are you're usually well above.

23 MR. STROCHAK: Yeah. I guess, I understand Your  
24 Honor's point about there not being any evidence on this point  
25 but from purposes of representation I can tell you that the

1 debtors are comfortable operating down to the level that I've  
2 described. If we got to the point -- or the low point in our  
3 budget is 1.7 million, I believe, in the cash. And what we're  
4 comfortable saying is that if we get down to \$700,000.00, that  
5 is a million below that we still feel that we can operate and  
6 we're perfectly comfortable telling the Court that we don't  
7 think we're going to get there, so we're willing to say as a  
8 condition to use some cash that we won't get there.

9 THE COURT: Other conditions you want to talk about?

10 MR. STROCHAK: We're very comfortable, Your Honor,  
11 having some milestones in connection with the connector seals  
12 consolidation and we've sketched out what those could look  
13 like. We think we can have half the business, half the  
14 connector seals business that we're going to move under  
15 contract by March 31st.

16 THE COURT: What -- let me ask this. I -- and maybe  
17 there was testimony and you can remind me about it if there  
18 was. I definitely recall the testimony that going forward with  
19 the consolidation the debtor had established that it was  
20 contingent upon signing contracts with some number and I never  
21 heard and I didn't ask about it. I thought about it then. I  
22 didn't ask anyone else about what happens if two of your four  
23 big customers sign, are you going to go forward with  
24 consolidation or not. There's no evidence as to what you're  
25 going to do.



1 All I heard was there was -- the debtor had  
2 established as a condition going forward with -- a contingency  
3 to go forward with consolidation that it signed contracts but,  
4 you know, in the real world you've got two who you've said  
5 sound like they're on board. They're willing to agree to  
6 quicker payment terms. They're willing to give you -- to have  
7 to sign on a piece of paper yet. You -- at least the testimony  
8 as to two of the customers was much firmer than as to the other  
9 two. So what happens if there are only two? I don't know. I  
10 didn't hear any evidence on this.

11 MR. STROCHAK: Yeah. I don't think it's a binary  
12 decision, Your Honor. I don't think the decision is we need to  
13 have, you know, X amount of customers or Y amount of volume in  
14 order to make this work. I think it's much more of an  
15 incremental-type thing. You have customers who might want to  
16 move certain parts but not others, so it's certainly not  
17 necessary that a customer move 100 percent of its business.  
18 You could take certain parts. I think it would be kind of a  
19 case-by-case calculation for the combination of parts that  
20 we're getting to decide if it makes sense to move those or not.

21 THE COURT: So your proposal was a half under  
22 contract by when?

23 MR. STROCHAK: By March 31st.

24 THE COURT: And now is the half by dollar volume? Is  
25 it -- what is the half of what?

1 MR. STROCHAK: The --

2 THE COURT: The two of four? I don't know what it  
3 is. I don't know what you're proposing.

4 MR. STROCHAK: Yeah, I think, Your Honor --

5 THE COURT: Lubin is -- talk to your lawyer.

6 MR. VOMERO: I don't know if it -- if you want  
7 testimony from me under oath or do you want no more testimony?

8 THE COURT: No, I -- we'll -- I'll take it as a  
9 representation now and we'll see what others have to say about  
10 it.

11 MR. VOMERO: Well, like I said, the -- as  
12 Mr. Strochak said, it's not a binary decision. It isn't a --  
13 if we don't get the following it makes no sense. We're going  
14 to be moving -- let's -- we plan that we've got about seven  
15 million dollars a year, maybe as much as eight and a half  
16 million dollars a year business into the Rock Hill plant,  
17 but -- and if we get that only a contribution [unintelligible]  
18 probably two and a half to three million dollars. If the  
19 cust -- if only two of the customers were going to move there,  
20 only two of the ones who -- they're -- the two we talked about  
21 as much more firm right now are two of the ones that moved  
22 there, that might be four million dollars' worth of business  
23 and it might wholly contribute a million two but that's a much  
24 better contribution than we have now.

25 So our point of view is we [unintelligible] any of it

1 as long as having the operation makes sense in terms of total  
2 size. We said the 50 percent is sort of the floor on the  
3 theory that in order to really enhance our ability to get the  
4 financing we had to have a significant incremental cash flow  
5 and we thought the 50 would be a good starting point to that.  
6 That would be probably seven and a half million dollars' worth  
7 of business and probably two and a half million dollars of  
8 incremental cash flow.

9 THE COURT: Thank you. Go ahead, Mr. Strochak.

10 MR. STROCHAK: So to continue with those conditions  
11 we think that we can complete production of the inventory bill,  
12 the building the banks of inventory. We think we can complete  
13 90 percent of that by May 31st. And then by June 30th we would  
14 substantially close the Vienna plant. And the reason I say  
15 "substantially" is I guess we can't foreclose the possibility  
16 that somebody has to go in and do something in there, but for  
17 the most part operations substantially concluded at that plant  
18 and the overhead of that plant labor overhead eliminated as a  
19 cost. So those are the milestones that we've come up with on  
20 the connector seals consolidation.

21 Turning to the timing of the extension of  
22 exclusivity, our original papers asked for the end of April.  
23 As this matter proceeded, as we joined the hearing on continued  
24 exclusivity with the cash collateral motion, we realized that  
25 end of April was going to buy us filing papers in a month or so

1 if the Court granted the extension filing papers in a month or  
2 so for a further extension if we had leave to do so. So we  
3 amended the motion and sought to extend exclusivity until July  
4 31st.

5 Really, our thinking on that, Your Honor, was that a  
6 substantial cause of the cash drain on the case has been the  
7 expenses of administration and the reorganization expenses and  
8 this is now the third time we've had contested exclusivity  
9 motions. Obviously, everyone has some responsibility for the  
10 costs of the reorganization process but we thought tacking up  
11 another one in April didn't make a whole lot of sense in light  
12 of where we are and how much it's cost to get here.

13 THE COURT: Well, it's a substantial cash drain but  
14 you keep adding back into your -- in doing your forecasts and  
15 projections your projections on EBITDA you had back all the  
16 reorganization expenses, so I understand -- in terms of looking at  
17 the cash budget it certainly has its impact, but --

18 MR. STROCHAK: That's my point, Your Honor.

19 THE COURT: -- in terms of your operating performance  
20 you've washed it out.

21 MR. STROCHAK: No, it doesn't have anything to do  
22 with the operating performance and that's not our thinking  
23 on -- that wasn't our thinking on the extension is that it  
24 would have any affect on operational performance of the  
25 business.

1           You know, Your Honor has made it very clear that your  
2 thinking is if there's going to be an extension it's going to  
3 be a short one. We're okay with that. You know, I guess we  
4 would suggest the end of May is appropriate. The reason why we  
5 think an extension is important is it will give us time to get  
6 the consolidation done, to get our customers into the contracts  
7 that we need, to get the consolidation done which will benefit  
8 anybody. There's nobody in this room who disagrees that this  
9 needs to be done, that this is a good thing for the business to  
10 do.

11           THE COURT: I don't know whether that's true or not.  
12 No one testified that they disagreed with it. Let's just put  
13 it that way.

14           MR. STROCHAK: Well, so no one has told us that we  
15 shouldn't do this. No one has questioned the business judgment  
16 in doing this to save these costs and, you know, we can  
17 disagree as to how successful it might be in generating  
18 additional cash flow but nobody says, don't do it. So that's  
19 our thinking on timing, Your Honor.

20           Let me turn to the cash collateral motion and see if  
21 I can sum up where we are. The touchstone, of course, is  
22 adequate protection and we think that the evidence demonstrates  
23 that we have not been overly aggressive in this case. We have,  
24 in fact, been generous with the adequate protection that we've  
25 provided to the senior lenders in this case. We've paid them

1 principal payments throughout the case. We paid them interest  
2 payments throughout the case. We're proposing to continue to  
3 do so.

4           They are protected by a very substantial equity  
5 cushion in the business. Their own valuation evidence, Your  
6 Honor, Mr. Vomero suggests that they've got, you know, nearly  
7 twice the protection of the value of their claim so a very  
8 substantial equity cushion on top of them.

9           Let me focus on Mr. Vomero's valuation for a minute.  
10 We don't agree with it, Your Honor. We think it's low and we  
11 think the evidence suggests that there are a lot of things that  
12 he did in that valuation that with a couple of changes of  
13 assumptions, changes in calculations you end up with a much  
14 more substantial valuation. The comparables are thin. There  
15 is no control premium for the publicly traded comp values. I  
16 think that would appropriately be added in. He's included the  
17 corporate overhead in the EBITDA numbers for the medical --

18           THE COURT: Yeah, but what he did was --

19           MR. STROCHAK: -- and the insulators business.

20           THE COURT: -- he used a methodology that computed  
21 total enterprise value. Then over it has to go somewhere so I  
22 had always thought it sort of standard that you have to find an  
23 allocation method. You at one point seemed to disagree with  
24 the allocation method he did. He did it based on the  
25 percentage of EBITDA in that segment so the result was, of

1 course, that connector seals got almost no overhead because it  
2 had almost no -- it had negative EBITDA. But you -- what do  
3 you do? You want to ignore overhead in determining total  
4 enterprise value? It wasn't -- you know, Mr. Vomero wasn't  
5 putting a value on the medical business, for example. He was  
6 putting it on the entire enterprise and so you'd have to do  
7 something with overhead. You have to allocate it out and I  
8 didn't hear any -- other than your raising questions with him  
9 about what methodology he did use, there certainly wasn't any  
10 testimony on your side as to -- that there was a better or more  
11 appropriate method for allocating it.

12 What do you do with the overhead? Do you want to  
13 ignore it?

14 MR. STROCHAK: Well, Your Honor, this is my point.  
15 My point is the valuation method he chose bears no resemblance  
16 to what's actually going on in this case. That is, no one here  
17 is suggesting that the debtor should put the entire business up  
18 for sale and that that would be anything close to the way to  
19 maximize value.

20 THE COURT: No. But the law is that in determining  
21 adequate protection that I have to look at, what's the pot of  
22 assets that's securing their indebtedness, it's basically all  
23 the assets. So you look at -- you know, the cases I've read  
24 said that's what you ought to do so you value the entire  
25 enterprise. Okay. That's what he did. And in doing that he

1 had to do something with overhead -- with corporate overhead.  
2 It's not -- it's not a revenue generator. It's the cost of  
3 doing business. It's got to be allocated out.

4 If these were stand-alone businesses they'd have  
5 their own overhead but they don't. There was corporate, so I  
6 don't understand your criticism of what he did with respect to  
7 allocating overhead. It had to be allocated. You raised the  
8 question as to whether it was appropriate to allocate it based  
9 on the percentage of EBITDA from that line of business but  
10 didn't suggest what -- that there was some different method he  
11 should have used. You raised in your questions that, well, the  
12 result was that because medical had higher EBITDA, more of the  
13 overhead got charged to it. That's true. I understand that.

14 And you say, well, you know, there's a different  
15 multiple so it might have affected total value. Okay. I  
16 understand your point. I don't agree with it but I understand  
17 your point.

18 MR. STROCHAK: Thank you, Your Honor. The key here  
19 is ultimately valuation is about modelling. You're modelling  
20 values for this business. And my point, Your Honor, is that we  
21 think he modeled it the wrong way. We think he modeled it as a  
22 publicly-traded comparable value on an enterprise-wide basis.  
23 He did do the whole thing but he basically just took one  
24 valuation method and didn't use any other valuation method,  
25 which is erroneous in this case when what the lenders here are



1 asking for is for a sale of the medical business. They're  
2 saying you should go out separately and sell medical.

3 THE COURT: Let me ease your mind right now. The one  
4 part of Mr. Vomero's testimony that I don't credit is his  
5 recommendation that they test the market for sale of the  
6 medical business now. He didn't opine about the value of the  
7 medical business. I -- you know, Mr. Tishler can argue to the  
8 contrary, but I found unpersuasive the testimony or the  
9 arguments for going out and doing, you know, a banker's book  
10 and going out and testing the market when at least the debtor  
11 is not serious about selling now.

12 If exclusivity gets lifted, different ball game, you  
13 know, somebody can put in a plan that proposes selling noncore  
14 assets, proposes selling the medical business fair game.  
15 That's going to hinge on exclusivity. Okay. I understand the  
16 debtors' position. The debtors' position is they don't want to  
17 market the medical business now. They think the market, you  
18 know -- the whole market is distressed, period. They think  
19 it's good business. They think it's a growing business. They  
20 want to keep it. They want to -- if they want to sell it, they  
21 want to sell it when things improve. They get a higher value.  
22 I understand your arguments about it.

23 So I just -- your time is better spent arguing about  
24 something other than -- and I thought I made this clear  
25 earlier -- that one of the conditions -- if I permit use of

1 cash collateral, one of the conditions is not likely to be  
2 that, you know, they put specific assets on the block right  
3 now. Exclusivity gets lifted, you know. The Committee -- if  
4 the Committee is going to propose a plan or someone else is  
5 going to propose a plan and they think that things are so dire  
6 you'd better sell some assets while you can, I don't know  
7 what -- nobody testified about what this -- how lengthy the  
8 sales process is likely to be. If cash were really running  
9 out, you know, I might feel differently about whether the Court  
10 should impose a condition.

11 MR. STROCHAK: That's understood, Your Honor, and we  
12 certainly have no problem with anyone coming back to work if  
13 circumstances change. You know, we recognize we need cash to  
14 operate, too, so there's certainly no desire to drive this  
15 business into the ground like a dart. We want to do what  
16 maximizes value for all constituents in the case and that's the  
17 idea. So there's no suggestion that if things need to be  
18 revisited they shouldn't be revisited in our part, Your Honor.

19 Let me talk a little bit about the testimony and the  
20 argument -- or the testimony that's come in regarding the  
21 debtors' projections and their performance over time. You  
22 know, the fundamental complaint we've heard is that the debtors  
23 haven't done a great job forecasting. They haven't done a  
24 great job predicting how much business they're going to get and  
25 how much cash flow they're going to generate.

1           Your Honor, we really don't disagree with that. We  
2 haven't done the greatest job. We've missed a lot. We've  
3 missed a lot because it's in many respects like trying to catch  
4 a falling knife with what's been going on in the automobile  
5 industry particularly recently and over time as well. But what  
6 that doesn't mean is that the two businesses, insulators and  
7 medical, that are performing very well aren't in fact  
8 performing very well. The evidence has shown that they've got  
9 increasing EBITDA over the trailing 12-month period. That's  
10 straight from Mr. Vomero's analysis and they've held up well in  
11 extraordinarily difficult times.

12           THE COURT: But not sufficiently well to support the  
13 debt load that the company has. Consequently, you haven't been  
14 able to find an exit lender who's willing to put up enough  
15 money that would pay off all the prepetition secured lenders.  
16 They -- you know, if they were stand-alone businesses without a  
17 big debt load, that might all be well and good what you're  
18 saying. I don't fault the debtor for the difficulty in coming  
19 up with accurate projections in the current market. I mean,  
20 it's a nightmare. But the reality is that given the debt load  
21 that this company has and it -- with the plan that the debtor  
22 proposed for exiting bankruptcy you haven't been able to find a  
23 lender or lenders willing to come up with the money to  
24 accomplish it.

25           MR. STROCHAK: And that's why we're --

1 THE COURT: Again, it's not -- I don't fault  
2 management for that. It's the circumstances, you know, that  
3 there -- they like hit the perfect storm.

4 MR. STROCHAK: That's why we're here, Your Honor.  
5 What we're asking for is the additional time that we need in  
6 order to fix the drain on cash that is the connector seals  
7 business so that we can try and get this company out of  
8 bankruptcy and keep it together, preserve value which is firmly  
9 our view that the way to do that is to keep this business  
10 together at this time, and while the lenders have sought a sale  
11 the Committee has, as far as I can tell, agreed with us that  
12 selling these businesses now is not the right thing to do so  
13 that's our view --

14 THE COURT: Well, unless --

15 MR. STROCHAK: -- like --

16 THE COURT: -- they're the ones who decide to do it.  
17 Unless they decide they're going to propose a plan and they  
18 feel that they need to do it, so I -- you know, they're -- they  
19 certainly didn't put on evidence in favor of selling the  
20 medical business now but they also didn't say it may be  
21 necessary to sell noncore assets if they can be sold.

22 MR. STROCHAK: Yeah, I heard that too, Your Honor,  
23 but the key for us is that, you know, keeping these core  
24 businesses together is in our view the way to maximize value  
25 and that's what we're here trying to --

1 THE COURT: Well, you're defining medical as core?

2 MR. STROCHAK: Medical insulators and --

3 THE COURT: Medical is in a stand-alone facility  
4 right now. Do you want to combine connector seals into their  
5 plant? Why do you define it as "core"?

6 MR. STROCHAK: Well, by "core" I mean the business  
7 that's doing well.

8 THE COURT: Different?

9 MR. STROCHAK: Yeah. And it's core in the sense  
10 that, you know, it's a fundamental aspect of this business.  
11 It's the business that this company wants to reorganize around  
12 going forward. The medical business and the insulators  
13 business are going to be the core businesses around, which we  
14 reorganize and the connector seals business provides, you know,  
15 we hope once the business is fixed some incremental cash flow  
16 to that.

17 THE COURT: Okay.

18 MR. STROCHAK: With respect to the extension of  
19 exclusivity, we do think it's important, Your Honor, to have  
20 exclusivity extended so we can accomplish the connector seals  
21 consolidation. It's --

22 THE COURT: Even if exclusivity is lifted, what  
23 prevents you from accomplishing the connector seal  
24 consolidation?

25 MR. STROCHAK: Well, there's nothing objective that

1 stops the process. We think it makes it harder. We think a  
2 competing process where -- first of all, there's a distraction  
3 issue if we're going to have a competing plan and have to move  
4 forward and litigate a competing plan at the same time that  
5 we're trying to do this consolidation because that makes it  
6 very difficult to get customers to sign up. They say, you  
7 know, why should I sign into a litigation, why should I sign  
8 into a company with a long-term contract where I have  
9 absolutely no idea if, you know, you're going to survive next  
10 month's litigation, much less long term so it becomes very  
11 difficult to convince people that this is the right thing to  
12 do.

13           The other factor, Your Honor, is frankly the cash  
14 burn. If exclusivity is lifted and we move into a competing  
15 plan process, the cash burn is going to get not better but  
16 worse because the reorganization expenses are going to go up,  
17 so that is a substantial factor in our mind and obviously  
18 you've heard a lot from both the prepetition lenders and the  
19 Committee on the cash issues. It's a concern for us. It's a  
20 concern for everyone and we think it gets substantially worse  
21 if we move now into a competing plan process so we'd like the  
22 time to get the connector seals consolidation done.

23           We may have to have a competing plan process. We may  
24 have to have a valuation litigation. We may have valuation  
25 litigation with three parties contesting it rather than two,

1 and we may someday be there but we don't think we should be  
2 there over the next three, four months. We think that that  
3 fight, those issues are best put off until we have the  
4 consolidation done.

5 THE COURT: The testimony would say there's been zero  
6 movement with respect to valuation, which I was told on day one  
7 was the central issue in this case. Zero movement. Why --  
8 excuse me -- what is there to suggest that three months from  
9 now that would be different? The connector seal business is  
10 not at the center of the valuation dispute from the testimony  
11 I've heard. At most, the debtor hopes to get some incremental  
12 revenue from consolidating connector seal business.

13 MR. STROCHAK: Well, incremental cash flow, Your  
14 Honor.

15 THE COURT: Yeah. Incremental cash flow. Reducing  
16 it to overhead by shutting the Vienna facility and bringing  
17 some, you know, moving some of the business in. But it's not  
18 core. You've already said that's not part of the core business  
19 around what you're trying to reorganize and there has been  
20 zero -- the evidence shows zero progress in trying to negotiate  
21 a plan or come into agreement on value or, you know, you each  
22 cross -- you each point fingers at each other. You say they  
23 don't want to meet. They say they've told you what their views  
24 of value and what their methodology is so, you know, it's just  
25 stuck in place.

1 MR. STROCHAK: Well --

2 THE COURT: At which point, you know, the Court's  
3 attitude would be, okay, let's just lift exclusivity. Let them  
4 put the competing plans in and we'll go forward and we'll  
5 have -- you know, have to have a valuation trial, fine. But  
6 this is only a recipe for draining -- you're going to get to  
7 the end when the Court can't extend exclusivity. That, you  
8 know, and I sort of read your papers to say, yeah, that's what  
9 we want to do. We want to get to the end and we want to leave  
10 them three months and we've had, you know, 18 months and we'll  
11 leave them three months. Good luck. It isn't going to work  
12 that way.

13 MR. STROCHAK: Well, Your Honor, I don't disagree  
14 with you that there's been no progress. I don't disagree with  
15 you that, you know, I can't stand here and tell you that within  
16 three months we're going to be able to get to a deal. All I  
17 can say is that what we've heard from the Committee has been  
18 the same refrain over and over again.

19 THE COURT: Well, they say the same thing about you,  
20 you know. They say the same. "You," meaning the debtors.  
21 Okay. This is the first hearing where we have the prepetition  
22 lenders, you know, finally -- they've been sort of sitting  
23 below the surface. Mr. Cahn has showed up at hearings from  
24 time to time. Mr. Tishler has been on the phone a few times,  
25 but the prepetition lenders have sort of stayed under the radar



1 screen, for the most part, but now they've surfaced opposing --  
2 sort of opposing the use of cash collateral, opposing extension  
3 of exclusivity and saying, you know, the debtor has been  
4 immovable in trying to negotiate out these issues. Okay. So  
5 this case is at loggerheads.

6 MR. STROCHAK: You know, I don't disagree with you on  
7 that, Your Honor. I'm not sure that it's unfixable. I'm not  
8 sure that if we couldn't get together with a mediator that we  
9 might be able to get --

10 THE COURT: How did you know what I was thinking?

11 MR. STROCHAK: -- movement. Well, you told us what  
12 you were thinking, Your Honor.

13 THE COURT: Because I have the mediation order open  
14 in front of me here about you're making sure that I have the  
15 power to order the parties to mediation whether they like it or  
16 not. Okay. It's right on the screen right in front of me  
17 right now.

18 MR. STROCHAK: From our perspective, Your Honor --

19 THE COURT: General order --

20 MR. STROCHAK: -- we're --

21 THE COURT: --M-143.

22 MR. STROCHAK: We're more than willing to try it.  
23 You don't have to order us to participate. You know, we're at  
24 a loss as to how to make progress.

25 THE COURT: You all need to put your cards on the

1 table with each other and stop. This is just -- you know, from  
2 the Court's standpoint I'm just watching all of you turn a lot  
3 of paper and get nowhere.

4 MR. STROCHAK: Well, all I can say from the debtors'  
5 perspective, Your Honor, is not for lack of trying. We really  
6 have tried. We provided them with our valuation.

7 THE COURT: Well, I'm not going to get into it. Each  
8 of you point the fingers at each other about who's trying,  
9 who's not trying, who's cooperating, who's not cooperating. I  
10 expressed my view earlier. I mean, for the longest time the  
11 expert report that didn't get into evidence finally -- well,  
12 actually it wasn't total enterprise value. It was just core  
13 assets so I don't know what value you -- you didn't put a value  
14 on the noncore assets but it was mystifying to me in light of  
15 what's happening in the market and the decline in business and  
16 missing projections that the debtor could take the position  
17 from day one value of this company hasn't changed at all.

18 You know, the last time I heard any valuation sort of  
19 testimony from your witnesses, oh, we're just going to put that  
20 part of the business at liquidation, but the other parts the  
21 value has gone up. You know, it all stays the same.

22 MR. STROCHAK: Well --

23 THE COURT: I'm skeptical.

24 MR. STROCHAK: Respectfully, Your Honor, if you go  
25 back and compare the complete valuation report that we did in

1 April -- excuse me, in August with the valuation of core assets  
2 you'll see that those values did go down. They haven't gone  
3 down as much as the Committee says they should have gone down,  
4 but in part that's due to improvement in the business. The  
5 businesses have done better and that's an objective fact. We  
6 think that --

7 THE COURT: But you disagree that multiples --

8 MR. STROCHAK: -- that's demonstrated.

9 THE COURT: -- in the marketplace have -- you think  
10 they've stayed the same, they haven't gone down?

11 MR. STROCHAK: No, I think some of the multiples  
12 probably have gone down, Your Honor, and I think --

13 THE COURT: So the business may have improved but if  
14 multiples go down you may not, you know -- things may be worse  
15 off or you may be standing still or you may have declined a  
16 little bit, but not as much as they say. And, you know, I  
17 recognize Your Honor has some skepticism about that but, you  
18 know, we're not standing here saying as a matter of argument or  
19 as a matter of fact that there's been no decline in value. I  
20 think that if you compare the two values, the one done in  
21 August, and the one updated most recently for this hearing --

22 THE COURT: Well, the only evidence in this hearing  
23 is from Bridge Associates that puts a total enterprise value  
24 below the secure and unsecured debt. It would have the equity  
25 out of the money by a lot. Okay. This is not the valuation

1 here. Okay. This was for cash collateral purposes they put it  
2 in. You were unsuccessful in getting your report in but, you  
3 know, the only competent evidence I have before me right now  
4 shows the debtors underwater. There's no value for equity.

5 MR. STROCHAK: I appreciate that, Your Honor, and I  
6 understand where we stand for purposes of this hearing. Your  
7 Honor, unless you have any questions I think that I've probably  
8 said --

9 THE COURT: Let me hear from --

10 MR. STROCHAK: -- what I need to say at this point.  
11 Thank you.

12 THE COURT: Mr. Tishler, you want to --

13 MR. TISHLER: Your Honor, I don't want to get up here  
14 and make a lot of excuses, but I do want to tell you we heard  
15 you loud and clear in terms of the -- in fact, I didn't hear it  
16 just from you. I've heard it from the debtors and the  
17 Committee how everybody hates the market testing theory and so  
18 you'll be happy to know that we're not going to push it  
19 anymore.

20 I did want you to understand it was our way of  
21 attempting to do sort of a compromise here that's obviously  
22 blown up completely in our faces. We saw --

23 THE COURT: That overstates it, but --

24 MR. TISHLER: Yeah, but we saw the cash burn and we  
25 saw the declining of the business. We knew -- we know we're

1 over secured. We couldn't come in here, I didn't feel like,  
2 with a straight face and demand and pound the table that you  
3 sell medical, but the reason for it, as you know, was when you  
4 see a decline like this even if it's just cash you run out of  
5 cash, as you said, and there is no more enterprise value. We  
6 want to avoid that situation and that's all we're here today  
7 basically putting in front of you again.

8 THE COURT: So tell me the length and the conditions.

9 MR. TISHLER: We don't want to go any further out  
10 than the budget has given us visibility on, which puts them at  
11 two million dollars. I also, Your Honor, have a sheet that  
12 I -- that we've talked to the debtors about that lays out the  
13 conditions if you'd be interested in just having that in front  
14 of you, so --

15 THE COURT: You've shared -- everybody has a copy  
16 Just hand it -- I do have it.

17 MR. TISHLER: You all have it? Okay. We recognize  
18 that we need to have cash usage. The debtors need to have cash  
19 usage through some period of time. We recommend just out to  
20 the budget period, which would end May 22nd. We would ask that  
21 there be tightened conditions because if things go horribly  
22 wrong I think we need to have some break on the process much  
23 before they use up all the cash.

24 So 1(a) would be maintaining minimum levels of EBITDA  
25 that -- for each month during the term of the extension. It's

1 measured monthly against the financial statement forecast that  
2 we anticipate. They usually give us one and they can give us  
3 one again and that it supports the budget that they've already  
4 submitted with their cash collateral motion.

5           The second one is one that's currently in there,  
6 which is maintaining cash balance and cash receipts for at  
7 least 90 percent against budget. That's in the current order.  
8 Limiting cash disbursements to at most 110 percent of weekly  
9 amounts set forth in the budget measured weekly, that is also  
10 in the budget. Providing a weekly reconciliation of net cash  
11 available to the debtors' bank account balance including  
12 without limitation the operating account, the DIP account.  
13 That is a new request. And maintaining current borrowing base  
14 availability no worse than the most recently submitted  
15 certificate. That insures against a drain of the A/R which is  
16 also our collateral.

17           With respect to the connector seal consolidation,  
18 we'd like them to meet those benchmarks that we have there,  
19 which is transitional agreements and long-term at least three-  
20 year contracts executed by customers. We suggested 60 percent  
21 of the projected sales of connectors business for '09. We  
22 understood Mr. Lubin to testify he could do that by mid-March  
23 but they said March 31st that's --

24           THE COURT: I heard the mid-March as well, but you  
25 don't have a problem with March 31?

1 MR. TISHLER: No, Your Honor, I don't. And then the  
2 transitional agreements in part 2(a) much generate minimum  
3 aggregate revenue, \$900,000.00 and contain payment terms no  
4 longer than net 20 days. They were explained to us that that  
5 was one of the advantages of it. We just wanted to make sure  
6 that the company got them.

7 THE COURT: Just -- I heard the evidence. You know,  
8 I'm --

9 MR. TISHLER: Right.

10 THE COURT: -- skeptical in the current market that  
11 people are really -- customers are really going to be willing  
12 to shorten their payment terms but --

13 MR. TISHLER: We're just --

14 THE COURT: -- that's the evidence I heard.

15 MR. TISHLER: -- basically put your money where your  
16 mouth is is what this is.

17 Finally, we think there may be some value in  
18 retaining investment banker to search for exit financing during  
19 the extension. That's what we would recommend. We would take  
20 the existing cash flow --

21 THE COURT: There's no shortage of investment bankers  
22 in this case already. I mean, I -- the notion of paying  
23 somebody else to do what -- you know, if you all got together  
24 and you all have your financial advisors. If you actually  
25 would sit down in a room together and figure out what other

1 possible avenues for exit financing there are, I can't see what  
2 another -- still another investment banker with another fee is  
3 going to bring to the table, but --

4 MR. TISHLER: Our view is a fresh look because  
5 apparently nobody has been able to get it done at this point.  
6 Maybe that's telling us something but anyway --

7 THE COURT: Well, I thought we were going to hear  
8 from Wells Fargo next week.

9 MR. TISHLER: Those would be -- and what we would do  
10 is we would recommend just adding these to the existing order.  
11 The order that the debtor submitted to you has additional  
12 changes to it which we can't agree to, so we would just add  
13 these to the existing order. It's simpler. We can turn to you  
14 probably by tonight if that would suit you.

15 With respect to the other half of the issue because  
16 our market testing got no trans -- traction and frankly, Your  
17 Honor, you described this well. We've been sitting on the side  
18 lines patiently for about a year waiting for something to  
19 happen here. We're as frustrated, if not more frustrated than  
20 anybody else because, to use your analogy, we've shown our  
21 cards because we're all in in this deal. Our monies are even  
22 spent. It's in the deal and we have really struggled with this  
23 frankly about the exclusivity extension, but we've come down to  
24 the point where we think the only option really is to terminate  
25 exclusivity. It will foster -- it will force a negotiation



1 here.

2 THE COURT: Well, what about Mr. Strochak's point  
3 that the debtor needs to maintain exclusivity in order to  
4 effectively complete the consolidation of the connector seal  
5 business?

6 MR. TISHLER: I -- my understanding is that's to be  
7 done by the end of May. What's going to happen is if you  
8 terminate exclusivity -- we're almost to March now. It's going  
9 to take time for people to formulate plans, put them on file.  
10 There will be a disclosure that -- you're going to have a  
11 disclosure statement hearing. Nothing is going to happen with  
12 respect to those plans. It's going to disrupt this business  
13 that -- the lenders are certainly -- Mr. Vonero testified  
14 correctly. We are in favor of them consolidating connector  
15 seals.

16 THE COURT: Oh, I know. I heard that. I understand.

17 MR. TISHLER: So we don't see that that has to be  
18 disrupted at all. We understand that it will cause --

19 THE COURT: Well, Mr. Strochak argued. I didn't hear  
20 evidence. Maybe I did. I mean, I -- Mr. Strochak just argued  
21 that it will be more difficult to get customers to sign up  
22 long-term contracts if exclusivity is lifted because there's  
23 more uncertainty about who's going to be running this company.  
24 Why is anybody going to want to sign a three-year contract,  
25 which is something that you've put in here as a contingency

1 condition?

2 MR. TISHLER: You know, I understand that, Your  
3 Honor. At the same time my sense about this case is we're  
4 fiddling while Rome's burning and --

5 THE COURT: I agree with that part.

6 MR. TISHLER: You know, I'm sorry. It may put a  
7 burden on folks but frankly it's been my experience when people  
8 will not voluntarily come to the table, when you put a little  
9 poker to their back side it tends to do something here, and if  
10 all of that is going to force that issue then we would welcome  
11 it.

12 At this point, our plan would be to put everything up  
13 for sale. You know, we understand. There may be enterprise  
14 value and all that good stuff, but the reality of it is when  
15 you look at what's happened to our equity cushion, you can  
16 disagree with Mr. Vomero by a million or so. We are the only  
17 constituent who has put up a valuation in this case and that  
18 valuation was 68 million when it was approximately 90 million  
19 about a year ago and so it has lost substantial value. That's  
20 enterprise value. That's assuming a willing buyer and seller.  
21 And in this market we all know the reality of that.

22 THE COURT: Well, Mr. Stochak would say that the  
23 debtor can try and cram down a plan on you and restructure your  
24 debt because forcing a sale of the company now is not an option  
25 that will maximize estate value, that you acknowledge there is

1 value for creditors other than the secured creditors.

2 MR. TISHLER: We haven't done a liquidation analysis.  
3 We certainly hope there is. And by the way, they want to do  
4 the cram down. Let's get the market testing done under  
5 LaSalle, right? I mean, you can't have it both ways. You  
6 can't stiff-arm the lenders the whole case.

7 THE COURT: And the one thing -- I mean, you were  
8 under the radar for awhile but now the debtor finds itself with  
9 all of its creditor constituencies opposing what it wants to  
10 do, opposing extension of exclusivity. It's got no creditor  
11 support.

12 MR. TISHLER: No.

13 THE COURT: Which is certainly a factor in deciding  
14 whether to extend exclusivity.

15 MR. TISHLER: Right. And we would not be opposed to  
16 mediation either, Your Honor, but we're not sure what role we  
17 would even play in that. I mean, we're happy to facilitate --  
18 that's been our role. We've tried to talk to both sides.  
19 We've talked to each other, but I'm not even re -- you know the  
20 situation. You've read it correctly, at least from my  
21 perspective and I agree with everybody. It's at an impasse.

22 THE COURT: Don't go over -- I -- your condition 1(a)  
23 maintaining minimum levels of EBITDA for each month during the  
24 term of the extension measured monthly against financial  
25 forecast. Well, the forecasts have been unfortunate other than

1 everybody seems to agree the cash forecasts have been pretty  
2 good, but the operating forecasts have not.

3 MR. TISHLER: Right.

4 THE COURT: Okay. I don't know what forecasts you're  
5 talking about.

6 MR. TISHLER: They would have --

7 THE COURT: What you really care about -- well, I  
8 mean, maybe you do care about EBITDA as well.

9 MR. TISHLER: Yeah. I mean, because they've already  
10 put a budget. They can build from the budget a financial  
11 forecast. They've submitted a 13-week budget, the core. I  
12 mean, we've got to measure it. I mean, back to your point.  
13 How much cash does it take to operate this business. There's  
14 an immoral liquidity. They're into this junior DIP.

15 THE COURT: Right.

16 MR. TISHLER: We've got to be sure there are  
17 sufficient breaks on this process.

18 THE COURT: All right. Let me hear from the  
19 Committee. I don't know who's going to argue. Mr. Bracht or  
20 Mr. Levine.

21 MR. BRACHT: Well, Your Honor, I'm not sure  
22 exactly --

23 THE COURT: Well, you agree that the debtor should be  
24 able to use cash collateral.

25 MR. BRACHT: Yes. We do. And --

1 THE COURT: And what do you think about --

2 MR. BRACHT: And in terms -- and as far as the terms  
3 and the conditions are concerned, we're much more comfortable  
4 with what the debtors have proposed with respect to cash  
5 collateral than the terms that have been proposed by  
6 Mr. Tishler. We think -- I think that May 22nd period is  
7 understanding -- based on what we've heard in the evidence,  
8 which is what I want to talk about, is probably unrealistic  
9 given what they need to do in order to get this  
10 consolidation --

11 THE COURT: Well, the only evidence of a budget is  
12 the 13-week budget. I heard some testimony that they thought  
13 that cash would increase after that period but I'm not taking  
14 that to the bank. I mean, I just --

15 MR. BRACHT: I just -- our feeling is that given what  
16 they have described with respect to the contingencies in the  
17 program with respect to this consolidation, that they're -- you  
18 know, that they're going to be pushed to get it done or make  
19 significant progress by the 22nd of May so we think that's too  
20 short.

21 THE COURT: Well, but if the debtor is right that  
22 after May 22nd the cash balances will be rising and actually  
23 the budget shows that the cash forecast, Exhibit 1, shows it's  
24 reaching its low point at May 1st, \$1,746,000.00 and then going  
25 up in fits and starts, but the testimony is going to go up

1 aft -- you know, would go up after that.

2 I could be wrong but I would suspect that if, in  
3 fact, when they get to the end of this 13-week budget if the  
4 number is increasing, I think Mr. Tishler would be making a  
5 mistake not to just agree to extend use of cash collateral  
6 beyond that. If the -- you know, if the numbers are improving  
7 I suspect that the prepetition lenders will be more willing to  
8 extend it.

9 I understand your point, Mr. Bracht, and I wish I had  
10 some more concrete evidence than we think the cash will go up  
11 after that. We think we can accomplish the consolidation by  
12 the end of May and by then they would have, you know, built --  
13 if they've actually signed some long-term contracts, they would  
14 have built the inventory. They would have been able to either  
15 close or come close to closing Vienna and save the overhead.  
16 There were a substantial part of the overhead, which was --  
17 testimony was about \$300,000.00 a month. You know, \$300,000.00  
18 a month would make a big difference in this cash forecast.

19 I'm not anxious to do this again May 22nd, but I'm  
20 also -- I think the prepetition lenders are on pretty solid  
21 ground in not -- you know, in taking a pretty hard and fast  
22 position, well, this should not go out beyond the May 22nd. If  
23 a new 13-week budget is done 13 weeks into this and has a basis  
24 in reality to show the numbers are going up, it may be that  
25 this will get resolved by the cash -- the cash collateral part

1 will get resolved by a stipulation, which would make a lot of  
2 sense coming down to the last day of the period doesn't make a  
3 lot of sense to me, but I understand your point. He doesn't --  
4 it's not a lot of time and I understand there's a lot they want  
5 to accomplish in that period.

6 MR. BRACHT: And, Your Honor, I -- you know, if I  
7 find myself in a little bit of a difficult position because in  
8 terms of consistency because while I think the period is too  
9 short -- we think the period is too short we also, as the  
10 evidence indicates -- we have some doubt as to whether or not  
11 the debtors are going to be able to accomplish what all they  
12 want to accomplish with respect to this consolidation.

13 THE COURT: Yeah, I didn't hear what happens if, you  
14 know, the customers don't sign up the contracts. I mean, I  
15 heard it was the contin --

16 MR. BRACHT: And that goes --

17 THE COURT: Condition.

18 MR. BRACHT: You know, we're definitely and very  
19 concerned about exclusivity. We don't think it's appropriate  
20 at all. And one of the factors and I want to talk about the  
21 evidence with respect to exclusivity, one of the factors is the  
22 viability of the reorganization plan. And near as I can tell,  
23 although I don't really think there's been a whole lot of  
24 evidence presented by the debtors with respect to the factors  
25 on exclusivity, but given then the benefit of the doubt, as

1 near as I can tell that part of their viable plan is this idea  
2 that this consolidation is going to work. And we heard a lot  
3 of evidence about what the contingencies were with respect to  
4 that. We heard evidence about what has happened in the past  
5 with respect to consolidations, that they attempted and  
6 accomplished in the past with respect to increased expenses and  
7 inefficiencies and that type of thing.

8 THE COURT: Well, you know, the market is turned  
9 upside down.

10 MR. BRACHT: Excuse me?

11 THE COURT: I said, the market is turned upside down.  
12 It's just --

13 MR. BRACHT: Well, this was -- I mean, these were in  
14 situations in the past and as we saw in the 10Ks when we  
15 weren't the throws of the market that we're here today and they  
16 had, you know, kind of touted the idea that they can do these  
17 consolidations and do them effectively, but at the same time  
18 their track record is that they have done it in the past and  
19 they have produced increased costs and production  
20 inefficiencies, which is different than what they're saying  
21 today.

22 So to the extent there's been any evidence of a  
23 viable plan, I don't think that they carry their burden in that  
24 regard. And that's another thing that I think we need to keep  
25 in mind. I was -- I recall --



1 THE COURT: The issue, though, is -- and I think the  
2 cases say the issue isn't whether the plan they have on file  
3 can be confirmed because --

4 MR. BRACHT: Well, you know, I'm not sure --

5 THE COURT: -- they could change that.

6 MR. BRACHT: -- that the plan that they have on file  
7 at this point is a plan that's filed at all given what's  
8 happened since. We weren't even able to go forward on that  
9 plan as we have originally scheduled because of the changes  
10 that took place with respect to connector seals, so I fully  
11 expect that there will be another plan filed at some point in  
12 time.

13 THE COURT: I do, too.

14 MR. BRACHT: So I don't think that plan is viable at  
15 all.

16 The other issue, I think -- and, you know, I want --  
17 I'm -- I was -- I read your opinion in the last exclusivity  
18 hearing and I realized that you had correctly determined that  
19 we made a lot of arguments in that case in that hearing, but we  
20 didn't produce a lot of evidence. And what I wanted to make  
21 sure of in this hearing is that we came forward with evidence  
22 that went to the factors with respect to exclusivity and I  
23 think we have and I'm prepared to discuss those.

24 THE COURT: Go ahead.

25 MR. BRACHT: But what I want to say is before we

1 start is that the burden is on the debtors.

2 THE COURT: Correct.

3 MR. BRACHT: And I find that in terms of this record  
4 that there has been very little evidence, if any, showing good  
5 cause under the factors of Adelphia for extending exclusivity.  
6 I mean, the idea -- excuse me -- Judge, I heard you. I think  
7 you pointed it out earlier with respect to one of the two, but  
8 this idea that it will give us some more time to fix the  
9 connector seals consolidation, well, there's not -- you know,  
10 if you don't it's going to somehow hurt that process. There's  
11 been absolutely no evidence presented on that issue other than  
12 what Mr. Strochak has represented to the Court and that's not  
13 evidence. There has been --

14 THE COURT: I thought Mr. Lubin testified about --  
15 not specifically about the consolidation but about what --  
16 there was testimony that -- critique it if you want, but there  
17 was evidence that support the debtors' view that any  
18 exclusivity would hurt their business.

19 MR. BRACHT: Ending exclusivity but not with respect  
20 to the connector seals consolidation and losing customers, but  
21 just kind of a general kind of discussion about what impression  
22 it may leave in the market in his belief.

23 THE COURT: Well, doesn't that -- doesn't it follow?  
24 I mean, why would a customer want to sign a three-year  
25 contract -- requirements contract for connector seals if they

1 see this case falling apart, exclusivity lifted, the  
2 prepetition lenders wanting to sell off pieces of the company,  
3 the Committee -- who knows what it wants to do.

4 MR. BRACHT: Well, Your Honor, I can speculate all  
5 day long about why they would or why they wouldn't but the  
6 point is there's been no evidence of what a customer would  
7 do. There's been simply no direct admissible evidence from any  
8 customer concerning what the customer's attitude is going to be  
9 with respect to various contingencies that may occur and that's  
10 really the point.

11 We're not talking about necessarily what Mr. Strochak  
12 thinks may be the best way of going and, you know, kind of give  
13 us a break but we're supposed to be talking about evidence.  
14 And I can go with the factors and I'll go -- I'm not going to  
15 go over all of them, but I'll go over some of them. I mean,  
16 the first one that I want to talk about very briefly is, well,  
17 is this case big and is it complex and I don't think that  
18 anybody believes that the case is big and the debtors' position  
19 has been from day one that this is simply a matter of balance  
20 sheet restructuring.

21 THE COURT: That was day one, but things did  
22 change --

23 MR. BRACHT: Well --

24 THE COURT: -- in the market. But I -- Mister --

25 MR. BRACHT: If it's gotten --

1 THE COURT: Mr. Bracht, it's not big or complicated.

2 MR. BRACHT: Okay. I didn't think it was. The other  
3 thing -- another thing that I'll briefly touch on is we --  
4 obviously they've had sufficient time including two extensions  
5 of exclusivity and during this time I think the Judge has  
6 recognized that the evidence shows that there has been no  
7 progress not just with respect to the Committee, but with  
8 respect to other issues that go to whether or not they're going  
9 to get a viable plan.

10 THE COURT: Well, this has been an extremely  
11 conten -- I've said this before. It's been an extremely  
12 contentious case from day one. Your partner, Mr. Silverstein,  
13 at first day hearings went into -- launched into a litany about  
14 all he wanted to talk about was the prepetition period and  
15 negotiations and unsuccessful and so terminate exclusivity now  
16 and let's get on with it. So it's been an extremely  
17 contentious and with all due respect, Mr. Bracht, the Committee  
18 and its professionals -- let me say, the Committee and its  
19 counsel have not convinced the Court that they have been going  
20 that extra mile to make this work to get the case through. I  
21 think there's more than enough blame to go around.

22 MR. BRACHT: Yes, I -- Your Honor, I can understand  
23 your sentiment in that regard.

24 THE COURT: For awhile -- and I did say this on the  
25 record --

1 MR. BRACHT: The burd --

2 THE COURT: -- the Committee opposed everything. We  
3 filed a brief in opposition to the simplest little motion. You  
4 filed it -- not you, but Mr. Silverstein filed an objection to  
5 extending the debtors' time to file its schedules. I couldn't  
6 believe it. I mean, the Committee has opposed -- I -- this is  
7 the first time, Mr. Bracht, with you -- you're in support of  
8 the debtor on one issue, continued use of cash collateral. I  
9 think it's the first time you've ever agreed with the debtor on  
10 anything.

11 MR. BRACHT: Could be, Your Honor. It could be.

12 THE COURT: And I don't mean personally you  
13 because --

14 MR. BRACHT: No, you're not at all, Your Honor. I  
15 take what you say at face value. I think it's unfortunate.

16 THE COURT: Okay. Why don't you go through the other  
17 factors?

18 MR. BRACHT: All right. The progress or the lack of  
19 progress is not just with respect to negotiations with the  
20 Committee, which I think we all agree are at a standstill, but  
21 if you look at the issues with respect to exit financing, and  
22 you read what went on with Cap One through Mr. Altineau, and  
23 what the true state of affairs was with respect to exit  
24 financing from really -- from July 29th when the first proposal  
25 letter and the only proposal letter that was ever executed by

1 Cap One and going forward and that was presented, if you  
2 recall, Your Honor, at the time of the first exclusivity period  
3 and from that point forward, it's completely deteriorated. The  
4 amount that Cap One is willing to lend or was willing to lend  
5 continually got lower as the months go by. We believe --

6 THE COURT: Well, it's share -- originally it  
7 discussed underwriting the full amount and then there came a  
8 time when it said, no, we have to syndicate. I don't know that  
9 that's attributable to the debtor and its financial condition  
10 as to the financial markets.

11 MR. BRACHT: Well, but this was the only -- at least  
12 at that time, this was the only financial source that the  
13 debtors were dealing with and we believe the evidence shows  
14 that as early as October the 22nd -- and I'm not talking about  
15 the real estate portion of it. I'm talking about the idea that  
16 as early as October 22nd Cap One had advised Mr. Lubin that  
17 they were not going to do 100 percent of this deal, that they  
18 were going to have to go out and get partners and they were not  
19 going to take 100 percent of the risk.

20 That was not something that was told to us. That was  
21 not something frankly that was ever told to us until I took  
22 Mr. Altineau's deposition.

23 THE COURT: And I read that. There may be some  
24 issue -- not much of an issue as to -- because it was all  
25 within a few days whether Mr. Lubin -- you showed him the

1 email. He said he hasn't seen it before. The email referred  
2 to Mr. Altineau having sent a letter. The letter is not in  
3 evidence. I think you have the better side of this issue.

4 MR. BRACHT: Well, and the point that didn't come up  
5 in the discussion or the examination with Mr. Lubin was  
6 regardless of the timing. Mr. Lubin on October the 29th in  
7 this courtroom told you and told us that it was the million  
8 dollars part on this inventory appraisal issue and that was the  
9 only thing standing in the way of them getting exit financing.  
10 And if you read Mr. Altineau's deposition I asked him directly.  
11 I said, "It was your decision not to fund 100 percent of this  
12 exit facility. Was it based in any way on the inventory  
13 issue?" and he said, "Absolutely not" --

14 THE COURT: I read it. I read it.

15 MR. BRACHT: If you -- and I guess that indicates a  
16 lot of things to me. First of all, is there a viable  
17 possibility of exit financing. You've heard the testimony from  
18 Mr. Lubin as to what the status is with rese3pct to the other  
19 three potential lenders.

20 THE COURT: Well, there might well be viable prospect  
21 for exit lending if a plan that was proposed converted all or  
22 most of the debt -- unsecured debt into equity because it would  
23 substantially reduce what the company -- what its future debt  
24 load would be and so far certainly the plan that's filed, the  
25 amended plan that's filed wouldn't do that.

1 MR. BRACHT: The amended plan that's filed, Your  
2 Honor, wouldn't do that and it doesn't even recognize the  
3 possibility that it could be appropriate. I mean, if you look  
4 at Mr. Lerno's -- I'm sorry. I'm getting his name wrong -- his  
5 valuation and it's already been said and I think I -- you took  
6 the words right out of my notes for my closing is that we're  
7 underwater and there's no value to hold equity here.

8 THE COURT: That's what his --

9 MR. BRACHT: That's what his value says.

10 THE COURT: It's not critiquing and you made the  
11 point --

12 THE COURT: There were some fair points that  
13 Mr. Strochak made. I had questions in my own mind about how  
14 there's only one comparable for medical. I'm skeptical about  
15 that, but that's what the evidence is. I thought Mr. Strochak  
16 had some fair points to make about the -- not just that one  
17 comparable but maybe on some of the others whether there were  
18 some more.

19 I'm not -- you know, when I was in practice I did a  
20 fair amount of work on valuation and experts with valuation. I  
21 don't remember somebody putting forward a report that relied on  
22 one comparable as a basis for a value, a significant piece of  
23 the business. So I have my own reservations about -- but  
24 that's what the evidence on the record is. That report.

25 MR. BRACHT: That's what we've got that's in the



1 records.

2 THE COURT: That's right.

3 MR. BRACHT: The only thing that I can really talk  
4 about and it was admitted. It was stipulated to by the debtors  
5 so I assume that there was some belief that it at least had  
6 some legitimate --

7 THE COURT: It goes to the weight, though. I mean,  
8 I --

9 MR. BRACHT: I understand. I agree with you, Your  
10 Honor. The -- but the possibility of a plan that was discussed  
11 with Mr. Walsh it's not something that's going to happen unless  
12 exclusivity is denied and we can set about trying to do  
13 something in a creative way using our time and using our  
14 efforts and using our talents to try to figure out a way out of  
15 this kind of deteriorating situation.

16 But it's not going to happen if exclusivity is  
17 extended. The extension of exclusivity is not going to change  
18 anything. The denying exclusivity is going to give the  
19 Committee and the creditors, talented business people the  
20 opportunity to try to figure out a way to get something done  
21 here.

22 At this point, we have not had that ability. We have  
23 not had that opportunity. The debtors have had 11 months in  
24 bankruptcy, 15 months or so -- I might be wrong -- off on that  
25 a little bit prior to bankruptcy to try to work something out

1 and I just don't -- I don't see any progress. I see things  
2 getting worse and not better and further --

3 THE COURT: And what's your position about mediation?

4 MR. BRACHT: Your Honor, we would be perfectly  
5 willing to participate in the issue. We've never -- I  
6 really -- I know we don't want to get into, you know, an  
7 argument about this, but I really do think that the -- this  
8 issue of, well, you didn't give us a report and --

9 THE COURT: There's no reason -- I don't want to get  
10 into that now either. I mean, I think I'm not going to decide  
11 this on the basis of the finger pointing, because there's  
12 plenty of it to go on.

13 MR. BRACHT: Well --

14 THE COURT: But what's clear to me is that this case  
15 is just sort of stuck and nothing is moving.

16 MR. BRACHT: Well, Your Honor, I have -- you know,  
17 one of the factors is a good -- is a prog -- good-faith  
18 progress in the negotiations and I think we've demonstrated --

19 THE COURT: There's two sides to that.

20 MR. BRACHT: I think that I -- we've put in  
21 evidence --

22 THE COURT: There's two sides.

23 MR. BRACHT: -- concerning the good faith or the lack  
24 thereof of the debtors with respect to a couple of issues and I  
25 think that one is a third one, but you don't want to go there,

1 then that's fine.

2 But this issue with respect to value that hasn't  
3 changed it's not only hasn't changed in bankruptcy, Your Honor,  
4 it hasn't changed since the first time that the default came  
5 about. We've been dealing with what has, in essence, been a  
6 discredited expert with respect to valuation. The valuation  
7 draft report that's on file with the Court it suffers from the  
8 same problems. It's got the same disclaimers. It's got the  
9 same statements concerning reliance on the debtors'  
10 representations and not checking the reliability of those.  
11 We've been dealing with what any reasonable --

12 THE COURT: The debtor is going to say if we get to a  
13 valuation trial and a debtor is going to stand on that report  
14 it's probably going to wind up with the same result it had  
15 here, so that's its problem.

16 MR. BRACHT: But the frustration is is that we've  
17 been dealing with a report that when it first came out, when  
18 the first disclosure statement was filed and if you go back and  
19 look at the first disclosure statement the same language is in  
20 the disclosure statement.

21 The WI Campbell was running from this valuation and  
22 from the valuation stated in that disclosure statement from day  
23 one. They will clearly did not believe it. They clearly --

24 THE COURT: Well, I don't know whether they believed  
25 it or not. I think I -- why don't you go on to your next

1 point? I have this point clearly in mind.

2 MR. BRACHT: Okay. And my --

3 THE COURT: You won on your motion to --

4 MR. BRACHT: I understand.

5 THE COURT: Your objection to the --

6 MR. BRACHT: But the reason why it's important is  
7 because when we looked at it and according to Mr. Walsh and  
8 what he's testified to any reasonable person would understand  
9 that it was not reasonable, it was not valid, it was not  
10 something that we could really deal with.

11 THE COURT: So why are you -- why is the Committee  
12 playing its card so close to the vest that it doesn't want to  
13 part with its valuation report?

14 MR. BRACHT: That we go kind of full circle on that  
15 because here -- I guess --

16 THE COURT: I mean, it's time for all of you to put  
17 your cards on the table.

18 MR. BRACHT: It's been -- we've had a lot of  
19 discussion about this and I guess part of the reason is is that  
20 we feel like we'd be bidding against ourselves. And the first  
21 reason is is that we've not had -- we -- we're -- there's not  
22 been really no reason for us to finalize a report. We have  
23 not -- under no obligation to do so and the value of the  
24 company has been a moving target since we started.

25 THE COURT: You know, Mr. Bracht, I --

1 MR. BRACHT: Your Honor, we --

2 THE COURT: Wait, wait, wait, just let me finish  
3 this.

4 MR. BRACHT: We were --

5 THE COURT: Wait, wait. Stop. I believe  
6 Mr. Silverstein told me earlier in the case that the Committee  
7 was not prepared to sit down with the debtor and negotiate till  
8 it got more information from the debtor. And there were issues  
9 about how rapidly that information was provided. I can't  
10 remember which hearing it was where Mr. Silverstein's arguments  
11 were not backed up by your own professional who thought, yes,  
12 it's taking time to get stuff, but his requests were being  
13 responded to, was getting -- initially I was told, he didn't  
14 have all the information. So things got protracted. One of my  
15 opinions I think on exclusivity talked about when the  
16 negotiations were likely to start. They were delayed a little  
17 longer because the Committee -- I thought it was a respectable  
18 position. It wanted the information before it sat down.

19 Okay. I -- you know, I find it hard -- it was when I  
20 read the briefs for this that, again, without saying where the  
21 fault lies on it that was the first I'd heard that the  
22 Committee still hadn't shared a report with the debtor and its  
23 professionals.

24 MR. BRACHT: Your Honor --

25 THE COURT: I mean, I asked you about this long -- if

1 I had known that what wasn't being done I probably would have  
2 entered an order about it a long time ago. We wouldn't be here  
3 today.

4 MR. BRACHT: I think we need to go back and get the  
5 chronology and kind of -- we were in position and we were  
6 prepared. In fact, we had an order in place by Your Honor  
7 concerning the confirmation hearing that we were going to be  
8 producing our report pursuant to court order sometime in early  
9 January in contemplation of the confirmation hearing. That  
10 confirmation hearing was put off and it was put off because of  
11 a blow-up in the business of the debtor. I mean, they -- I  
12 don't know what WI Campbell thinks and I might add their report  
13 is a moving target as well.

14 THE COURT: Oh, that I would agree with.

15 MR. BRACHT: And their report would not be considered  
16 regardless of all the other problems it might have as really a  
17 valid report today given the changes in the debtors' business.  
18 So what happened? What did we say? Okay. Why give them a  
19 report that's based on old information. Don't we have to do a  
20 report that's based on current information? And how do we  
21 assess the probability of this consolidation plan with respect  
22 to the connector seals as being a good one or a bad one, a  
23 successful one or not successful?

24 All we had at the time, Your Honor, we don't have --  
25 you know, I forgot to ask Mr. Lubin this in his examination.

1 There's no written plan for this consolidation. The most  
2 information that we've learned about this consolidation is when  
3 I took Mr. Lubin's deposition a week ago. We had nothing about  
4 what this consolidation plan was going to be about. We didn't  
5 know how they were going to do it. We didn't know when they  
6 were going to do it. We didn't know how much of it they were  
7 going to do it and we made the decision that we weren't going  
8 to produce a report based on old information and that's where  
9 we are today.

10 THE COURT: All right.

11 MR. BRACHT: That -- you may disagree with that  
12 decision, but I think it was a valid decision at the time. We  
13 are prepared --

14 THE COURT: You know, if you all decide you're going  
15 to wait until you get that final piece of information before  
16 you -- look, it's one thing if the report is for use in the  
17 confirmation hearing and evaluation trial. It's another thing.  
18 Draft reports get used in negotiations. They're subject to  
19 change. Okay. I've got -- you could work out a  
20 confidentiality agreement or agree that neither side will  
21 introduce the report in evidence and, you know, that happens a  
22 lot.

23 Do we have a problem?

24 MR. BRACHT: We don't have a problem, Your Honor.  
25 Like I said, Your Honor, we -- if we're going to mediate this

1 case we're going to be prepared to mediate. I don't know what  
2 your order is going to contain, but I suspect after this  
3 conversation that it might contain something like that. I  
4 mean, that's the Judge's -- if that's your wish, if that's your  
5 order, we will abide by your order.

6 THE COURT: Well, what's your suggestion, Mr. Bracht?  
7 I know you want exclus -- let's assume that I don't extend --

8 MR. BRACHT: You know, my suggestion --

9 THE COURT: That I do -- well, hold on. Let's assume  
10 that I, you know, grant some very limited extension of  
11 exclusivity, order all of you to mediation very promptly. What  
12 else should the order contain?

13 MR. BRACHT: I don't -- I don't really have any  
14 additions to that. I think it would be fine. Your Honor, we  
15 can -- we have talked -- we have met and talked with them. I  
16 mean, it is an absolute red herring, I think. I mean, what do  
17 they -- we have told them what we think. We have made  
18 proposals. We've been -- explained our comps. We have told  
19 them how we got to our methodology. We have disagreed with  
20 them about their comps. We've had discussions with them and  
21 we've presented them paper that they can look at what we're  
22 doing. What -- I mean, this concept of a report that contains  
23 qualifications and, you know, description of the business and  
24 all that kind of stuff, where is that going to get us?

25 Look, I don't -- my view is is that let's get a



1 report out here and let's get it done, but my point is I don't  
2 think it makes any difference. If we're going to be where we  
3 are now and there's not going to be any movement between either  
4 party then it's going to be a waste of time, but that's what  
5 mediations are for. I've been through a bunch of them and I  
6 think that I -- I agree with the Court that at this stage that  
7 it's probably the thing to do because we can't seem to get off  
8 of first base.

9 But, you know, I can promise you, Your Honor, is if  
10 we're going to deal from a situation where we're looking at an  
11 enterprise value of 120 million dollars and old equity  
12 retaining all the control of the company and we're getting, you  
13 know, preferred stock with no control in the company or  
14 something like that, which is what the last plan was proposed,  
15 then that's not going to work. We need people to be realistic  
16 about what the value of this company is and whether or not old  
17 equity is in the money.

18 THE COURT: All right.

19 MR. BRACHT: And until somebody wakes up and smells  
20 the coffee it's not going to do any good but we're trying --  
21 we're not against trying to work out a deal. You heard  
22 Mr. Walsh. We're willing to work out to propose a plan that  
23 converts us 100 percent into equity. I don't know what else we  
24 could do.

25 Anyway, Your Honor, I -- I don't think that the

1 evidence shows given their burden on any of the factors that  
2 give rise to the extension of exclusivity which is a serious  
3 matter, that they've met that burden. I think we've presented  
4 evidence of a lack of good faith. I think we've presented  
5 evidence of lack of a viable plan or a reasonable probability  
6 of a viable plan, and I think every factor that we've talked  
7 about with respect to exclusivity is in our favor and that the  
8 evidence shows that exclusivity should not be extended.

9 THE COURT: Thank you, Mr. Bracht.

10 MR. BRACHT: You bet.

11 THE COURT: Mr. Stochak? So is the story and the  
12 debtors going to stick with it? The plan is the plan is the  
13 plan and preferred stock to the noteholders and that's it and  
14 you're not -- you know, You're not willing to budge off it?

15 MR. STROCHAK: No, Your Honor. That's never been the  
16 story.

17 THE COURT: Okay.

18 MR. STROCHAK: You know, we have a plan. We've tried  
19 to --

20 THE COURT: That plan is not feasible. You can't --  
21 you don't have any exit financing. You haven't been able to  
22 get exit financing. The plan you filed is not viable. You  
23 couldn't go -- if you went forward with a confirmation --  
24 disclosure confirmation hearing, you couldn't have confirmed  
25 that plan.

1 MR. STROCHAK: Because of the lack of exit financing?

2 THE COURT: Yes.

3 MR. STROCHAK: We agree, Your Honor. That's why we  
4 pulled it off the table and deferred the plan process. It's  
5 the unresolved contingency. That's what we have on the exit  
6 financing. And, you know, we're doing our best to get it.  
7 It's not for lack of effort but we're not there yet. We're in  
8 terrible, terrible credit markets. We've proposed a plan that  
9 converts the debt to equity. You know, we haven't proposed a  
10 cram-down at this point. We've been trying to do what the  
11 senior lenders wanted us to do and we told them what we would  
12 try to do and so we can't make it happen and we haven't come to  
13 the conclusion that we can't possibly make it happen.

14 If we have to propose a plan that crams them down and  
15 says no other financing available, we may end up there but, you  
16 know, we told them we wanted to take them out and we're still  
17 trying to take them out. That's how we started this case and  
18 that's where we still are. That's been their insistence so  
19 far. I mean, they haven't moved off that position either, so  
20 there's been a lot of advantages going all around.

21 Your Honor, I suspect at this point you don't want to  
22 hear me argue about the communications between us --

23 THE COURT: No. What I want to hear you actually  
24 talk about for a few minutes is the sheet that Mr. Tishler gave  
25 me with the lender's proposed terms for extension of cash

1 collateral.

2 MR. STROCHAK: That's exactly where I was going to  
3 head, Your Honor. You know, the existing order was a  
4 negotiated order. It has a lot of conditions and things build  
5 into it. The ones that Mr. Tishler wants to put in in addition  
6 are, you know, troubling in many respects. I think, you know,  
7 the EBITDA covenant, it's hard for us, you know, because we  
8 come up with a forecast that we're sure we're going to meet. I  
9 suspect we probably could at some point. I don't know how  
10 useful that is to anybody but --

11 THE COURT: I'm concerned. I'm concerned about, you  
12 know, EBITDA can fluctuate from month to month particularly  
13 when there's a consolidation plan going on and if you miss it  
14 one month, what happens then? It doesn't -- the evidence would  
15 seem to show there's sufficient equity cushion -- sufficient  
16 cushion that protects the secured lenders that I'm not sure  
17 that looking at one-month figures would be appropriate to blow  
18 this whole thing up.

19 MR. STROCHAK: That's exactly our position on that  
20 one, Your Honor. Ninety percent of the weekly cash amounts  
21 point 1(b) that's a very small margin of error. If we're  
22 talking about, you know --

23 THE COURT: Not if you have such a conservative cash  
24 forecast, that's what -- which is what I heard that, you know,  
25 that was it and I think I asked the question of Mr. Lubin about

1 it. Maybe it was Mr. Welhouse but I specifically asked the  
2 question. I said, "Was this" -- I don't remember the terms I  
3 used, but I was corrected to, no, it's a conservative cash  
4 forecast. This is not just a reasonable cash forecast. This  
5 is very conservative so --

6 MR. STROCHAK: Would you think it's conservative,  
7 Your Honor, but still the idea of essentially ending use of  
8 cash collateral shutting down the case if we have a 10 percent  
9 variation off the budget. You know, we're talking about a cash  
10 budget of, you know, 1.7 million at the low point; you know,  
11 call it two million at the end of the period, \$200,000.00. You  
12 know, that's one check from a customer that gets shifted from a  
13 Friday to a Monday, right? We're talking about weekly cash  
14 budget here.

15 THE COURT: Well, I don't think I would allow it to  
16 blow up but it might trigger the lenders coming back in here.

17 MR. STROCHAK: Well, to be clear, we don't have any  
18 problem with them coming back here at any point. I mean, you  
19 know, if --

20 THE COURT: What -- Mr. Lubin seems to want --  
21 Mr. Strochak, why don't you --

22 MR. LUBIN: Your Honor, if you don't mind, I do want  
23 to say a number of these conditions where [unintelligible] is  
24 already deemed in the cash collateral order, but I think that's  
25 not quite accurate. Some of these things are in there in

1 cumulative form so if we're ahead one week, let's say, we were  
2 able to -- we had a disbursement that happened a little bit  
3 later, the receipt came a little bit earlier, we could be off  
4 the following week. The cumulative [unintelligible] be in  
5 compliance and we could leave well enough because that one week  
6 was the problem. There are a number of these things that are  
7 in there that say on a cumulative basis the company will do X,  
8 Y and Z.

9 THE COURT: Mr. Tishler, what's the -- that does seem  
10 a reasonable proposition.

11 MR. TISHLER: Yes. Yes, Your Honor.

12 THE COURT: It's my concern about --

13 MR. TISHLER: The issue is blowing up the case. I  
14 think as it is drafted now it has a five-day grace period or,  
15 you know, gives them the right to come in here, which I think  
16 that's where the burden should lie is that they have some basis  
17 for having blown the covenant because, again, we've heard the  
18 testimony. The cash is going down. This is all liquidity that  
19 they have so, I mean, I think some version of this needs to be  
20 in the order. This is the very heart of what we're talking  
21 about.

22 Now, whether we -- you know, I have to talk to my  
23 clients about, you know, what period of time. We could talk  
24 about a two-week test or something like that. What -- if  
25 you've got a second my client is -- if I can --

1 THE COURT: Go ahead. Go ahead.

2 [Pause in the proceedings.]

3 MR. TISHLER: Your Honor, I've been corrected. The  
4 cash receipts and disbursements is recorded and tested on a  
5 cumulative value and that we're -- that's the current process.  
6 We're happy with that.

7 However, on the cash on hand where they've already  
8 testified that it's a conservative plan and we're giving them a  
9 10 percent cushion on top of that, we think that is absolutely  
10 got to be the way it is.

11 THE COURT: I'm just thinking about loud. You know,  
12 it would seem to me that, for example, if the point were cash  
13 got down to around two million dollars, I could understand  
14 heightened sensitivity about the cash balance versus budget  
15 when it's four million or three million. I'm not sure that  
16 missing the cash balance by 10 percent in one week ought to  
17 result in everybody running in here for another hearing. I  
18 don't know whether I'm -- my biggest concern, Mr. Tishler, I  
19 said it day one right at the beginning of the hearing was I'm  
20 just fearful that if the cash burn rate stays what it is now or  
21 increases and it ran out of money and then there's no going  
22 concern -- let me tell you what I -- well, I'll wait until you  
23 speak to your client -- clients, plural.

24 MR. STROCHAK: I'm sorry, Your Honor. Your question?

25 THE COURT: No, I -- Mr. Tishler is talking to his

1 client as you were --

2 MR. TISHLER: Your Honor, that's sort of echoing your  
3 concept. We could live with not below a million and a half and  
4 then if it dips below a million and a half go to the 90  
5 percent.

6 THE COURT: Let me stop you. Let me tell you what  
7 I'm going to do with respect to cash collateral. Okay.  
8 Because the order expires tomorrow I'm going to permit the  
9 debtor to continue to use cash collateral on pending a new  
10 order being entered on the same terms as existed until now.  
11 But I want you to try and work out with the debtor a new order,  
12 new covenants. I understand what your objections are, but I  
13 want you to try and endeavor to resolve this issue of  
14 additional covenants. If you can't resolve it submit counter  
15 orders and I'll resolve it. Okay. It does seem to me that  
16 with this -- and, you know, I'm trying not -- I'm not  
17 negotiating. Ultimately I've got to enter an order. It's  
18 going to be -- you're all going to be a lot better off if you  
19 can agree on the terms of this only till May 22nd.

20 So the length of the time I agree with the  
21 prepetition lenders that I may well extend it beyond that but  
22 not without seeing a new budget and what the situation then.  
23 Hopefully, you'll -- if things have improved you'll just work  
24 out a new stipulated order. It does seem to me that from your  
25 client's standpoint the week-to-week variations -- yeah, it's



1 of interest and importance to them, but less critical until the  
2 cash balance comes down for -- I think it's a concept you ought  
3 to try it and work out with the debtor.

4 As I say, we'll talk about it as soon as we finish.  
5 How much time do you want to submit either try and work out an  
6 agreed order consistent with my ruling or submit counter orders  
7 and I'll decide. Okay. I don't want to be writing covenants.  
8 I'm not a bank lawyer. I don't want to be writing covenants  
9 that don't make sense for the debtor or for the prepetition  
10 lenders.

11 Mr. Strochak, let's talk about paragraph number 2(a).  
12 Mr. Tishler agreed to switch the date to March 31. Is the  
13 proposal with that -- changed to March 31 acceptable to the  
14 debtors?

15 MR. STROCHAK: That will be okay, Your Honor. The  
16 only caveat I have is that, you know, there's a requirement  
17 that the contracts be at least three years. We'd like the  
18 flexibility on that. You know, if we have a customer comes  
19 back and says, I can't do three but I can do two, you know,  
20 we'd like to have the flexibility to work that through.

21 THE COURT: Mr. Tishler?

22 MR. TISHLER: Yeah, that's fine, Your Honor.

23 THE COURT: All right. Two years. I think you're  
24 going to be able to work most of this stuff out, okay. I don't  
25 know about 2(b). Look, I'm going to leave this to you to try

1 and work this out. Let's not negotiate it now. See if you can  
2 work it out. If you can't work it out submit your counter  
3 proposals. If we have to have a hearing, Mr. Tishler will do  
4 it by phone. I know you're not in town.

5 MR. TISHLER: All right.

6 THE COURT: Okay. Please work it out.

7 MR. STROCHAK: I will.

8 THE COURT: Paragraph 3 I reject. Just got more  
9 investment bankers than we know what to do with already. If  
10 you just all sit down together maybe you'll come up with some  
11 more ideas. If the debtor decides it wants to do it, fine, but  
12 I'm not going to compel him to hire more. Find an independent  
13 professional. Okay. All right.

14 Exclusivity. I'm ordering an extension of  
15 exclusivity until April 30th and I'm also ordering -- well,  
16 everyone has agreed under M-143 the amended general order I  
17 could compel mediation even if the parties haven't agreed, but  
18 the parties have agreed.

19 [Pause in the proceedings.]

20 THE COURT: I expect the parties to agree on a  
21 mediator by noon Friday, March 6th and if you've been unable to  
22 agree on a mediator I will appoint one. I heard you all agree  
23 on a mediator and it seems to me that given the issues that  
24 separate the parties, you may well want to select someone who's  
25 not a lawyer.

1           So I'm going to request that the debtors submit an  
2 order requiring mediation by noon on March 6th. If you can't  
3 agree on the form of an order, submit counter orders and I'll  
4 resolve the issue without a hearing -- without a further  
5 hearing. Mediation should include issues of proposed  
6 reorganization plan and also valuation. I want the proposed  
7 mediation order to include provisions which you all ought to  
8 try and agree upon for exchanging valuation reports. If you  
9 want to put caveats in there or that it's without prejudice to  
10 the parties' ability at a confirmation hearing offer different  
11 evidence that's fine, but this stuff has got to stop. I want  
12 lay -- everybody to lay their cards on the table.

13           You know, if the Court has an approved mediation  
14 panel you don't need to use it. I mean, if you can agree on  
15 somebody you can just agree on somebody else. You're all  
16 sophisticated counsel and I'm sure you and your clients will  
17 have suggestions for who would be the best type -- what's the  
18 best type of person and maybe the person. I'm going to leave  
19 it to -- if you can't resolve who the mediator is, I will  
20 appoint a mediator. I believe under a general order I have the  
21 ability to do that.

22           If you can't agree -- all can't agree on this by the  
23 6th at noon you can all submit letters. You can spear me as  
24 well, but you can all submit letters stating your positions.  
25 And, you know, the mediation schedule is going to depend more

1 on who the mediator is and what their time is but, you know, I  
2 expect you all to be moving on it.

3 I want written status reports not with the detail. I  
4 don't want to know what goes on in the mediation other than the  
5 mediation is take -- has the mediation move forward, you know,  
6 meetings taking place. I leave it to the mediator to decide  
7 what information the mediator is -- beyond my requiring that  
8 you exchange your valuation reports, I leave it to the mediator  
9 to decide what other information he or she may want exchanged,  
10 but I want written status reports by March 31 at 5:00 p.m.  
11 Obviously, without revealing the confidences or negotiating  
12 positions.

13 Mr. Strochak, I'm certainly not ruling now but I'll  
14 tell you, you're going to have a giant fight on your hands to  
15 get exclusivity extended beyond April 30th, okay, so you want  
16 to be aware of that right now. I'm not ruling. I'll hear --  
17 if you have a new motion to extend exclusivity I'll hear it,  
18 but you're going to have a giant hill to climb unless  
19 there's -- you know, if you can show there's real progress  
20 being made and more times needed, that's one thing. But if the  
21 mediation has gotten nowhere, you can file your motion and I'll  
22 hear it and any evidence, but I just want you to know right  
23 now.

24 MR. TISHLER: Your Honor, just one --

25 THE COURT: Go ahead, Mr. Tishler.

1 MR. TISHLER: On the cash collateral order, as I  
2 understand it, we're to negotiate over these covenants, but  
3 we're going to use the existing cash collateral --

4 THE COURT: Yes.

5 MR. TISHLER: -- order otherwise --

6 THE COURT: Yes.

7 MR. TISHLER: I think we can get that done by the end  
8 of the week. Wouldn't you think, Adam?

9 MR. STROCHAK: I was going to suggest two days. I'd  
10 really like to keep a short time frame --

11 THE COURT: I agree.

12 MR. STROCHAK: -- because it will fill whatever time  
13 we give it.

14 THE COURT: I agree.

15 MR. STROCHAK: So end of the day Thursday. Is that  
16 okay, Your Honor?

17 THE COURT: That would be fine. Mr. Levine?

18 MR. LEVINE: Your Honor, if I make some --

19 THE COURT: Sure.

20 MR. LEVINE: I want to make sure for mediation  
21 purposes we're comparing apples to apples. I think we have to  
22 agree upon a date that we're going to value the company as of  
23 because obviously they're going to take a post organizational  
24 restructuring date whereas we think that's, you know,  
25 speculative of that right now, so I don't want to have to argue

1 about that issue. I think Your Honor should.

2 THE COURT: And what do you believe the date should  
3 be?

4 MR. LEVINE: I think it should be -- I don't know, as  
5 of the end of this month. The operation restructuring is  
6 speculative at best.

7 THE COURT: Mr. Strochak?

8 MR. STROCHAK: I really don't think it's appropriate  
9 to agree on that, Your Honor. I mean, in some ways we're  
10 trying to anticipate when the company is going to merge from  
11 bankruptcy and, you know --

12 THE COURT: I mean, you have to be comparing apples  
13 to apples for purposes -- the mediation to have any chance of  
14 success you can't be comparing apples and oranges.

15 MR. STROCHAK: Well, in the spirit of compromise,  
16 Your Honor, if anyone else thinks it's important then we're  
17 willing to agree on a date. That's fine.

18 THE COURT: All right.

19 MR. STROCHAK: Shall we just say --

20 THE COURT: Okay.

21 MR. STROCHAK: -- March 31st?

22 THE COURT: Agree -- you two agree on a date, okay?  
23 I don't need to know right now. I just want you to agree on  
24 the date as to what you're doing, okay? Because I want  
25 everybody comparing apples to apples.

1 MR. LEVINE: March 3st is fine with the Committee,  
2 Your Honor.

3 THE COURT: All right. Mr. Strochak?

4 MR. STROCHAK: Yes.

5 THE COURT: All right. Mr. Bracht?

6 MR. BRACHT: Yes, Your Honor. I'm not familiar with  
7 the rule. I am familiar with more or less the rules that we  
8 follow in Texas with respect to mediation and I just want to --  
9 I want to know what the rules are, but I -- my anticipation is  
10 that the mediation is confidential, that what --

11 THE COURT: It is.

12 MR. BRACHT: -- goes on in the mediation does not get  
13 reported to you other than --

14 THE COURT: The only thing that should be reported is  
15 whether --

16 MR. BRACHT: Yes, sir.

17 THE COURT: -- it's been an impasse and has been  
18 terminated.

19 MR. BRACHT: Right.

20 THE COURT: And that's the only thing I want to know.

21 MR. BRACHT: Okay.

22 THE COURT: Okay. That's the rules. I served as a  
23 mediator before I went on the bench and those were the rules  
24 that I always applied.

25 MR. STROCHAK: Your Honor, I have a housekeeping

1 question.

2 THE COURT: Yes.

3 MR. STROCHAK: On cash collateral the existing order  
4 expires. Obviously, if you want to just so order the record  
5 or --

6 THE COURT: Yes, I'm so ordering the record that the  
7 cash collateral order shall continue in effect pending  
8 submission of hopefully an agreed order or, if not, general  
9 orders that I will resolve remaining issues.

10 MR. STROCHAK: Thank you, Judge.

11 THE COURT: Okay. All right. So that the record is  
12 clear, the debtors' motion to continue use of cash collateral  
13 is granted on the terms described by the Court subject to the  
14 parties submitting an order with regard to the additional  
15 covenants or restrictions. The debtors' motion to extend  
16 exclusivity is granted to the extent that exclusivity is  
17 extended to April 30, 2009 subject to the condition that the  
18 parties promptly proceed to mediation as earlier described by  
19 the Court.

20 Any other housekeeping details? Mr. Lucas, you look  
21 like you're --

22 MR. LEVINE: Yeah, the solicitation is that --

23 THE COURT: Why don't you do this, Mr. Strochak? Why  
24 don't you see if you can work out because you've got to put in  
25 the two dates -- why don't you see if you can within the



1 parameters of what I rule we've got to have an order on --  
2 filed on ECF so why don't you see if you can come up with an  
3 agreed order that is consistent with the Court's ruling?  
4 Obviously, you need new dates for -- I guess need two dates and  
5 then the extension of exclusivity.

6 MR. STROCHAK: We'll do that.

7 THE COURT: Okay. You understand, Mr. Levine?  
8 You're looking --

9 MR. LEVINE: So what is the April 30th date? If it's  
10 a justifiable plan that seems to be meaningless to me. Pretty  
11 complex.

12 THE COURT: No, because I -- it -- what did the  
13 existing order provide? It provided you with how many days?  
14 Existing order -- let me see if I can find it.

15 MR. STROCHAK: How many days between plan exclusivity  
16 and solicitation exclusivity?

17 THE COURT: Yeah.

18 MR. STROCHAK: I think it's 60, Your Honor.

19 THE COURT: Okay. I want to do it on essentially the  
20 same -- I want to keep essentially the same schedule as we have  
21 now.

22 MR. LEVINE: Okay.

23 THE COURT: Okay.

24 MR. LEVINE: They essentially have until April 30th  
25 to file a plan?

1 THE COURT: Yes, and let me -- hold on.

2 [Pause in the proceedings.]

3 THE COURT: Okay. You have 30 days.

4 MR. STROCHAK: Thirty?

5 THE COURT: Yeah, so your deadline for filing a plan  
6 is April 30th and your deadline for soliciting acceptances  
7 is --

8 MR. LEVINE: I believe the prior one is 40 days, Your  
9 Honor.

10 MALE SPEAKER: Prior was 40-day period?

11 THE COURT: No, it actually was 30.

12 MALE SPEAKER: Thirty days.

13 THE COURT: May 29th. Actually, let's go over to  
14 June 1. Monday, June 1. Deadline for soliciting acceptances  
15 is June 1. Yeah, June 1 because of the holiday. Deadline for  
16 soliciting acceptances is June 1.

17 MR. STROCHAK: Thank you, Judge.

18 THE COURT: All right. Anything else that we need to  
19 cover?

20 MR. STROCHAK: I believe that's it.

21 THE COURT: All right. Thank you very much.

22 MR. STROCHAK: Thank you, Judge.

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1 I certify that the foregoing is a court transcript  
2 from an electronic sound recording of the proceedings in the  
3 above-entitled matter.

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Ruth Ann Hager

February 26, 2009